

CHAPTER 23
EMPLOYER'S CONTRIBUTION AND CHARGES

[Prior to 9/24/86, Employment Security[370]]
[Prior to 3/12/97, Job Service Division [345] Ch 3]

871—23.1(96) Definitions.

23.1(1) Accounts.

a. Benefit payment account. An account maintained in the unemployment compensation fund in which are recorded (1) amounts transferred from the unemployment trust fund in the United States treasury, and receipts from other sources, and (2) amounts of benefits paid.

b. Experience rating account. An account of an employer which is maintained by the department for the purpose of determining the contribution rate of that employer.

c. Clearing account. An account maintained in the unemployment compensation fund in which are recorded amounts transferred to the unemployment trust fund in the United States treasury.

d. Balancing account. An account set up in the employer balance file to receive benefit charges that by law are not chargeable to any employer. The purpose of the balancing account is to enable the department to properly account for all benefits paid out.

23.1(2) Average annual taxable payroll. The average of the total amount of taxable wages paid by an employer for insured work during the five periods (three or two periods for governmental contributory employers) of four consecutive calendar quarters immediately preceding the computation date.

23.1(3) Calendar quarter. The period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31 of each year.

23.1(4) Computation date. The date as of which employers' experience with respect to unemployment or unemployment risk is measured for the purpose of determining contribution rates.

23.1(5) Contribution and payroll report. An employer's report of the amount of contributions due to a state unemployment fund with respect to the employer's payroll.

23.1(6) Contributions. Payments required by a state employment security law to be made to the state unemployment fund by reason of insured work but does not include reimbursement payments of nonprofit organizations or governmental entities in lieu of contributions.

23.1(7) Coverage determination. A determination as to whether an employing unit is a subject employer and whether service performed for it constitutes employment as defined under the employment security law.

23.1(8) Employer. An employer subject to the employment security law of Iowa who is liable for contributions and subject to the experience rating provisions of the law or is liable for reimbursement payments in lieu of contributions. (See Iowa Code section 96.19(6).)

23.1(9) Experience. An employer's record with respect to contributions paid, benefits charged, and taxable wages reported.

23.1(10) Experience rating. A method for determining the contribution rates of individual employers on the basis of the factors specified in the state employment security law for measuring employers' experience with respect to unemployment or unemployment risk.

23.1(11) Reserved.

23.1(12) Experience rating account. (See "Accounts.")

23.1(13) Reserved.

23.1(14) Federal unemployment tax. The excise tax imposed by the Federal Unemployment Tax Act on employers with respect to having individuals in their employ.

23.1(15) Federal Unemployment Tax Act. Subchapter C of Chapter 23 of the Internal Revenue Code which relates to the federal unemployment tax.

23.1(16) Federal unemployment tax return. A report by an employer to the Internal Revenue Service of the amount of federal unemployment tax due and payable with respect to wage payments to workers during the calendar year.

23.1(17) Fund. The unemployment compensation fund established by this Act.

23.1(18) Funds.

a. Administrative funds. Funds made available from federal, state, local and other sources to meet the cost of state workforce development administration.

b. Contingency fund. An amount of money appropriated by Congress to meet certain unpredictable increases in costs of administration by the state workforce development divisions arising from increases in workload or other specified causes.

c. Employment security administration fund. A special fund in the state treasury, established by state law, in which are deposited moneys granted by the United States Department of Labor, manpower administration and moneys from other sources, for the purpose of paying the cost of administering the state workforce development program.

d. Title V funds. Funds appropriated by Congress to pay unemployment benefits under Title V of the United States Code to federal civilian and military employees.

e. Unemployment compensation fund. A special fund established under an employment security law for the receipt and management of contributions and the payment of unemployment insurance benefits. Included in this fund are moneys in the benefit payment account, clearing account, and unemployment trust fund account. (See "Accounts.")

f. Unemployment trust fund. A fund established in the treasury of the United States which contains all moneys deposited with the treasury by the state employment security agencies to the credit of their unemployment fund accounts and by the railroad retirement board to the credit of the railroad unemployment insurance account.

23.1(19) Reserved.

23.1(20) Reserved.

23.1(21) Rate. Rate of contribution.

23.1(22) Reserved.

23.1(23) Reserved.

23.1(24) Size-of-firm provision. The provision of a state employment security law which specifies the minimum number of employees, the minimum period of employment or minimum payroll which an employing unit must have before it is liable for contributions.

23.1(25) Status report. A report required of all employing units in a state giving the information on which the state employment security agency bases its determination as to whether the employing unit is liable for contributions under the state employment security law. Same as liability report.

23.1(26) Subject employer. An employing unit which is subject to the contribution provisions of a state employment security law.

23.1(27) Tax. (See "Contributions.")

23.1(28) Unemployment compensation fund. The unemployment compensation fund established by this chapter to which all contributions or payments in lieu of contributions are required to be deposited and from which all benefits provided under Iowa Code chapter 96 shall be paid. (See "Funds.")

23.1(29) Wage item individual. A line entry on a wage report list or a single wage slip, or a wage and separation report.

23.1(30) Wage report. A report by an employer of the wages of individual workers.

23.1(31) Wage listing. A report listing workers and their wages by social security number.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.19(1).

871—23.2(96) Definition of wages for employment during a calendar quarter.

23.2(1) Unless the context otherwise requires, terms used in rules, forms, and other official pronouncements issued by the department shall have the following meaning:

23.2(2) Wages paid. Wages for employment during a calendar quarter consist of wages paid during the calendar quarter. Wages earned but not paid during the calendar quarter shall be considered as wages for employment in the quarter paid. The Employer's Contribution and Payroll Report, Form 65-5300, shall be used as prima facie evidence of when the wages were paid. If the wages are not listed on the 65-5300, they shall be considered as paid:

- a. On the date appearing on the check.
- b. On the date appearing on the notice of direct deposit.
- c. On the date the employee received the cash payment.
- d. On the date the employee received any other type of payment in lieu of cash.

23.2(3) Wages payable means wages earned and unpaid. (See section 96.19(41).)

23.2(4) Wages is the name by which the remuneration for employment is designated and the basis on which the remuneration is paid is immaterial. It may be paid in cash or in a medium other than cash, on the basis of piece work or percentage of profits, commission, or it may be paid on an hourly, daily, weekly, monthly or annual basis. Remuneration paid in goods or services shall be computed on the basis of the fair value of the goods or services at the time of payment.

23.2(5) When a money value for board or lodging, or both, furnished a worker is agreed upon in a contract of hire, the amount so agreed upon, if more than the rates specially determined by the department or the rates prescribed herein, shall be deemed the cash value of the board and lodging.

23.2(6) Cash value of room and board.

a. If board, rent, housing, lodging, meals, or similar advantage is extended in any medium other than cash as partial or entire remuneration for service constituting employment as defined in the Act (Iowa Code chapter 96), the reasonable cash value of same shall be deemed wages subject to contribution.

b. Where the cash value for such board, rent, housing, lodging, meals, or similar advantage is agreed upon in any contract of hire, the amount so agreed upon shall be deemed the value of such board, rent, housing, lodging, meals or similar advantage. Check stubs, pay envelopes, contracts, and the like, furnished to employees setting forth such cash value, are acceptable evidence as to the amount of the cash value agreed upon in any contract of hire except as provided in paragraphs “d” and “e” of this subrule.

c. In the absence of an agreement in a contract of hire the rate for board, rent, housing, lodging, meals, or similar advantage, furnished in addition to money wages or wholly comprising the wages of an employed individual, shall be deemed to have not less than the following cash value except as provided in paragraph “d” of this subrule.

Full board and room per week	\$126.35
Meals (without lodging) per week	56.35
Meals (without lodging) per day	8.05
Lodging (without meals) per week	70.00
Lodging (without meals) per day	10.00
Individual meals:	
Breakfast	2.05
Lunch	2.60
Dinner	3.40
A meal not identifiable as either breakfast, lunch or dinner	2.00

d. The department or its authorized representative may, after affording reasonable opportunity at a hearing for the submission of relevant information in writing or in person, determine the reasonable cash value of such board, rent, housing, lodging, meals, or similar advantage in particular instances or group of instances, if it is determined that the values fixed in or arrived at in accordance with paragraph “c” of this subrule, or in the contract of hire do not properly reflect the reasonable cash value of such remuneration.

e. If the department determines that the reasonable cash value is other than prescribed in a contract of hire or in paragraph “c” of this subrule, the employer’s payroll and contribution reports to the department shall thereafter show the value of such remuneration as determined by the department.

f. Notwithstanding the provisions of this paragraph, the cash value of meals which are provided by and for the convenience of the employer on the business premises of the employer shall not be deemed as insured wages under chapter 96 of the Iowa Employment Security Law. Lodging furnished by the employer, for the convenience and on the business premises of the employer, shall not be considered wages if the employee is required to accept the lodging as a condition of employment.

This rule is intended to implement Iowa Code chapter 96 and sections 96.3(3), 96.3(5), 96.19(9), 96.19(9) "b," 96.19(12) and 96.19(20).

871—23.3(96) Wages.

23.3(1) "*Wages*" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

23.3(2) *The term "wages" shall not include:*

a. *Subsistence payments.* The amount of payment made by an employer to its employee, which is in addition to the employee's regular wages and is paid for the sole purpose of compensating the employee for expenses inherent in the performance of services by the employee away from the regular base of operation of the employer and employee, commonly referred to as subsistence pay.

b. *Traveling and other ordinary and necessary expenses.* Amounts paid specifically for traveling or other ordinary and necessary expenses incurred or reasonably expected to be incurred in the employer's business are not wages. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts if both wages and expense allowances are combined in a single payment.

c. *Employer's payments to persons performing military services.* Cash payments, or the cash value of other remuneration, made voluntarily and without contractual obligation to, or in behalf of, an individual for periods during which such individual is in active service or training as a member of the national guard, or the military or naval forces of the United States, including the organized reserves.

d. *Sick pay.*

(1) "Wages" shall not include any amounts paid as sick pay if the payments are made by or on behalf of an employer under a plan or system which makes provision for the employee's dependents or classes of employees generally.

(2) In the absence of a plan or system any amounts paid by or on behalf of an employer on account of sickness shall not be included after the expiration of six calendar months following the last calendar month in which the employee worked for such employer.

e. *Supplemental unemployment benefit plan (SUB).* The term "wages" shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ, under a plan or system established by such employing unit, with approval of the department. Such plan or system must make provision for payment to a trust fund or similar account on behalf of individuals performing services for it. The account must be used to pay supplemental unemployment benefits to such employing unit's employees over and above any sum to which such employees might be entitled under the provisions of the state employment security law. Such payments to employees are not remuneration for the purposes of reducing or preventing payment of unemployment benefits. Such plan shall contain the following features:

(1) The employer pays into a separately established trust fund or similar account an amount per hour (or amount equivalent) worked by the employees covered by the agreement until the maximum amount called for has been reached. The plan specifically provides for the supplementation of unemployment benefits under the written terms of an agreement, contract, trust arrangement, or other instrument.

(2) These payments made by the employer into the trust fund or similar account are not subject to recovery by the employer before the satisfaction of all liabilities to employees covered by the plan.

(3) The trust fund or similar account is to be used to pay supplemental unemployment benefits to employees over and above any sum to which they might be entitled under the provisions of a state employment security law.

(4) That the agreement shall provide that such employee is not entitled to receive any payment from the trust fund or similar account unless the employee is also concurrently eligible for benefits under a state employment security law.

(5) The plan requires that benefits are to be determined according to objective standards. Thus a plan may provide similarly situated employees with benefits which differ in kind and amount, but may not permit such benefits to be determined solely at the discretion of the administrator of the fund.

(6) That the employee has no vested right in any of the moneys paid into the trust fund or similar account except as the employee may qualify for benefits under the terms of the agreement.

(7) That any payment made to or on behalf of an employee be from and to a trust fund or similar account described in Section 401(a) of the United States Internal Revenue Code title 26 of 1970 which is exempt from tax under Section 501(a) of said Code.

(8) The employer shall seek approval of its plan by petitioning that its plan be designated as a supplemental unemployment benefit (SUB) plan in the manner provided for petitioning for a declaratory ruling. The employer should include a written copy of its plan in the petition for declaratory ruling. The department will respond in the manner provided for declaratory rulings.

f. Officers of corporation. The term “wages” shall not include wages paid to an officer of corporation if such officer is a majority stockholder:

(1) Unless such wage amounts are subject to a tax to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

(2) If such wages are required to be covered under this chapter of the Code as a condition to receiving a full tax credit against the tax imposed by the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3301-3309).

g. Remuneration paid by state or political subdivision. The term “wages” shall not include, effective January 1, 1978, remuneration paid by this state or any of its political subdivisions to:

- (1) An elected official
- (2) A member of a legislative body
- (3) A member of the judiciary of a state or political subdivision
- (4) A member of the state national guard or air national guard
- (5) As an employee serving on a temporary duty basis for fire, storm, snow, earthquake, flood, or similar emergency

(6) A person serving in a nontenured policymaking capacity or advisory capacity pursuant to state law which ordinarily does not require duties of more than eight hours per week.

h. Sole proprietorship or partnership drawing accounts. The term “wages” shall not include any of the following:

(1) Any amount of personal compensation withdrawn by a bona fide sole proprietor from the business or profession.

(2) Any amount of personal compensation withdrawn by a bona fide partner or partners from their partnership entity.

i. Payments into 401K and other deferred compensation plans. Payments made by an employer to a deferred compensation plan, established to provide for an employee’s retirement, are not wages subject to contributions unless the payments were deducted from the employee’s pay through a salary reduction agreement. In circumstances where both the employer and the employee contribute to the plan, the employer’s share is not wages unless the employee would receive a cash payment if the employee chose not to participate in the plan.

j. Remuneration paid to members of limited liability companies based on membership interest. The term “wages” shall not include remuneration paid to a member of a limited liability company based on a membership interest in the company provided that the remuneration based on membership interest is allocated among members, or classes of members, in proportion to their respective investments in the company. If the amount of remuneration attributable to membership interest and the amount attributable to services performed cannot be determined, the entire amount of remuneration shall be considered to be based on the services performed.

23.3(3) The term “wages” shall include:

a. Small business corporation remuneration. Remuneration paid to officers of “subchapter S” corporations (as defined in 26 U.S.C.A. 1371) shall be deemed to be wages. Any dividends must be approved and recorded in the corporate minutes prior to payment of such dividends. Any income to shareholders shall not be deemed to be dividends if such income is paid regularly, either weekly or monthly, and is not in proportion to such shareholder’s amount of stock, or in proportion to such shareholder’s investment in the corporation. Any income not qualifying for treatment as dividends shall be treated as wages. See subrule 23.3(2) “f” for possible exclusion of wages paid to corporate officers who are majority stockholders.

b. Wages of employees hired with equipment. Where an employee is hired with equipment, except where it is ordinary in custom and usage in the trade or business for employees to furnish such equipment at their own expense, the fair value of the remuneration for the employee’s services, if specified in the contract of hire, shall be considered wages. If the contract of hire does not specify the employee’s wages, or the value of the wages agreed upon under the contract of hire is not a fair value, the department shall determine the employee’s wages, taking into consideration the prevailing wages for similar work under comparable conditions, and the wages thus determined shall apply as wages and be so reported by the employer.

c. Union members. Members of a union, subject to the direction and control of the union and acting on behalf of the union, are considered employees of the union with respect to the services performed. Payments made to them by the union as reimbursement for time lost from their regular employment are considered wages.

d. Cafeteria plans. A particular benefit in a cafeteria plan will be considered to be “wages” subject to contributions (tax) for Iowa unemployment insurance purposes if the employee has the option of receiving a cash payment in lieu of the benefit. If the employee does not have the option of receiving a cash payment, the benefit will still be considered “wages” subject to contributions unless the benefit is specifically excluded from the definition of “wages” in Iowa Code subsection 96.19(12).

e. Personal use of company vehicle. The cash value of personal use of a company automobile or other vehicle is “wages” subject to contributions (tax) for Iowa unemployment insurance purposes and shall be reported to the department as wages paid in the quarter in which the personal use occurred.

This rule is intended to implement Iowa Code sections 96.5(5) “a,” 96.19(6) “a” (1) and (6), and 96.19(12).

871—23.4(96) Wages—back pay. A payment in the form of or in lieu of back pay to an individual (exclusive of legal fees and other litigation expenses) shall be reported by the employer as total and taxable wages paid to the individual in the quarter in which the employer actually made the payment in the form of or in lieu of back pay. A payment for back pay shall be taxable and recoverable if it meets the definition of wages contained in rule 23.3(96). Punitive or liquidated damages for other than lost wages, and job search expenses, are not taxable, recoverable or deductible as a back pay award.

23.4(1) Where the back pay wages, award or a judgment is paid as remuneration for employment by an employer into an account for an individual, the wages, award or judgment shall be considered as wages paid in the quarter in which the employer actually pays the wages, award or judgment to an account for the individual.

23.4(2) If an individual receives benefits for a period of unemployment and subsequently receives a payment in the form of or in lieu of back pay for the same period, and if the benefits are recovered by the department under an agreement between the employer and the individual allowing the employer to deduct and remit to the unemployment compensation fund the amount of benefits received by the individual from the payment in the form of or in lieu of back pay, the employer shall be required to report this amount to the department as total and taxable wages paid to the individual in the calendar quarter in which the amount is actually paid.

This rule is intended to implement Iowa Code sections 96.7(3) and 96.8.

871—23.5(96) Gratuities and tips.

23.5(1) The following criteria shall be applicable in determining whether tips are wages under the contributions provision of the Act: Tips received by an individual from a person or persons other than the individual's employer, and not accounted for to the employer, are not wages. If the employee makes an accounting to the employer listing the tips received, these tips must be reported to the department as total and taxable wages. Where the customer writes the amount of the tip on a bill and the employer pays the employee the amount so shown and charges it to the customer's account, such amounts are wages. Where the employer adds a certain percent to the customer's bill for disbursement to the employees, the sums so disbursed are wages.

23.5(2) Tips are considered reportable and taxable as wages when taken into account by the employer in determining the employee's compensation under the federal wage and hour law as amended in 1974, or when paid by the customer as a service charge set by the employer, or when pooled and distributed to the employees by the employer. The employer shall keep sufficient detailed records so that it can be ascertained, if necessary, by audit or other authorized inspection which compensation is reportable as taxable tips and which compensation is reportable as compensation other than tips. For reporting purposes to the department, the tips and other reportable and taxable compensation may be submitted in aggregate on Form 65-5300, Employer's Contribution and Payroll Report.

23.5(3) An accounting as used in this rule means the reporting of tips as gratuities by an employee to the employer for the purpose of deducting social security taxes or withholding taxes with the employer reporting the same on Form 941, Employer's Quarterly Federal Tax Return.

871—23.6(96) Taxable wages.

23.6(1) Definition.

The term "*taxable wages*" means the higher of the federal taxable wage base for the Federal Unemployment Tax Act (FUTA) or 66 2/3 percent of the statewide average weekly wage paid to employees in insured employment, multiplied by 52 and rounded to the next highest multiple of \$100 based upon the computation made during the previous calendar year to determine the maximum weekly benefit amounts for unemployment insurance benefits. Provided, however, for calendar years 1984 through 1987, the following amounts will be added to the taxable wage base:

- a. Calendar year 1984, add \$600 to the taxable wage base.
- b. Calendar year 1985, add \$1,100 to the taxable wage base.
- c. Calendar years 1986 and 1987, add \$1,600 to the taxable wage base.

23.6(2) Applicability and successorship.

a. If an individual has more than one employer, each employer must pay contributions (tax) on the employee's wages up to the taxable wage limit.

b. The employer shall not deduct any part of the contributions (tax) due on taxable wages from an employee's pay.

c. Taxable wages paid in another state by the same employer during the same calendar year prior to an employee being transferred to Iowa may be used in computing the employee's taxable wages in Iowa. Provided, however, that the other state will reciprocate by allowing Iowa employers which transfer employees to the other state to use the taxable wages reported to Iowa in computing that state's taxable wages.

d. A successor employer may use the taxable wages paid and reported by the predecessor employer to determine the successor employer's taxable wages if the successor employer received a transfer of experience from the predecessor employer.

e. A successor employer which received a transfer of experience may, at the successor employer's option, use the taxable wages reported by the predecessor to compute the taxable wages for the balance of the calendar year or may compute the taxable wages as if the employees acquired from the predecessor were new employees.

This rule is intended to implement 1987 Iowa Acts, Senate File 507, sections 6 and 8.

871—23.7(96) New employer contribution rates.

23.7(1) A contributory employer means all employers other than employers which have elected, or are required by law, to reimburse the department for benefits paid in lieu of paying contributions. An employer which has earned a "zero" rate is still considered to be a contributory employer.

23.7(2) For all calendar years through 1987, a nonconstruction employer, which has not yet qualified for an experience rate will be assigned the rate specified in rank 9 of the rate table in effect, but not less than 1 8/10 percent. For calendar year 1988, a nonconstruction employer, which has not been chargeable with benefits for 20 calendar quarters immediately preceding the computation date, will be assigned the rate specified in rank 12 of the rate table in effect, but not less than 1 percent. For calendar year 1989 and subsequent calendar years, a nonconstruction contributory employer, which has not yet qualified for an experience rate, shall pay contributions at the rate specified in the twelfth benefit ratio rank but not less than 1 percent until the end of the calendar year in which the employer's account has been chargeable with benefits for 12 consecutive calendar quarters immediately preceding the computation date.

23.7(3) A construction employer, which has not been chargeable with benefits for 12 calendar quarters immediately preceding the computation date, will be assigned the rate in rank 21 of the table in effect for calendar year 1983, 9 percent for calendar years 1984 through 1987, and the rate specified in rank 21 of the rate table in effect for calendar year 1988. For calendar year 1989 and subsequent calendar years, a construction contributory employer, which has not yet qualified for an experience rate, shall pay contributions at the rate specified in the twenty-first benefit ratio rank until the end of the calendar year in which the employer's account has been chargeable with benefits for 12 consecutive calendar quarters.

23.7(4) Once an employer has qualified for an experience rating, the rate will be computed in accordance with the formula given in Iowa Code section 96.7. Rates will vary from 0 percent to 9 percent depending on how each employer's experience compares to the experience of all other employers.

23.7(5) For the purposes of this rule, an administrative contribution surcharge and a temporary emergency surcharge may be added to an employer's contribution rate.

23.7(6) For the purposes of this rule, the first quarter in which an employer's account will be considered chargeable with benefits will be the third quarter of the employer's liability unless the employer paid and reported no wages during the first two quarters of liability. In that case, the employer will not be considered chargeable with benefits until the first quarter in which the employer pays and reports wages. Once an employer's account has been chargeable with benefits it will be considered chargeable for rate computation purposes until it is terminated.

23.7(7) For the purposes of this rule, any single employer which has two or more establishments or businesses engaged in different industrial classification activities, with one or more establishments or businesses engaged in construction activity, as defined in rule 23.82(96), shall be assigned the contribution rate applicable to construction if 50 percent or more of the combined business activity is derived from the establishments or businesses engaged in construction activities.

This rule is intended to implement Iowa Code section 96.7.

871—23.8(96) Due date of quarterly reports and contributions.**23.8(1) *Receiving date.***

a. Contributions shall become due and be payable quarterly on the last day of the month next following the calendar quarter for which the contributions have accrued. Provided that if the department finds that the collection of any contributions from a particular employer will be jeopardized by delay the department may declare such contributions due and payable as of the date of the finding.

b. If any due date prescribed in this rule falls on a Saturday or Sunday, or a legal holiday, the due date shall be the next following business day. Quarterly reports, contributions, and payments in lieu of contributions, if mailed, shall be considered as received on the date shown on the postmark of the envelope in which they are received by the department.

23.8(2) *Regular due date.* Each employing unit which is a covered employer subject to Iowa Code section 96.7, shall file with the department quarterly reports on or before the due date, and any employer failing to file a quarterly report when due shall be delinquent. Except as otherwise provided in this rule, quarterly contribution and wage reports are due and contributions are due and payable on or before the last day of the month following the close of each calendar quarter in which the wages were paid. Payments in lieu of contributions are due and payable on or before the thirtieth day after notification of the amount due is mailed to the last-known address of the employer. Quarterly notification of the amount of payments in lieu of contributions due from an employer shall be mailed to the last-known address following the end of each calendar quarter.

23.8(3) *Due date for new employer.* The first contribution payment of any employer who becomes newly liable for contributions in any year shall become due and payable on the last day of the month next following that quarter wherein occurred the twentieth calendar week, during the calendar year within which a total of one or more workers were employed on any one day, or the last day of the month next following that calendar quarter in which a total of \$1500 in wages was paid. The first payment of such an employer becoming liable in the course of a calendar year shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

23.8(4) *Due date for elective coverage.* The first contribution payment of any employing unit which elects with the written approval of such election by the department, to become an employer, or to have nonsubject services performed for it deemed employment, shall become due and payable on the last day of the month next following the close of the calendar quarter in which the conditions of becoming an employer by election are satisfied, and shall include contributions with respect to all wages paid for employment occurring on and after the date stated in such approval (as of which such employing unit becomes an employer), up to and including the calendar quarter in which the conditions of becoming an employer by election are satisfied.

23.8(5) *Due date for newly liable employer.* The first contribution payment of an employer who becomes newly liable for contributions in any year in any other manner shall become due and be payable on the last day of the month next following the quarter wherein such individual or employing unit became an employer. The first payment of such an employer shall include contributions with respect to all wages paid for employment for such individual or employing unit since the first day of the calendar year.

23.8(6) *Delinquent date and penalty and interest.*

a. A quarterly report or contribution payment or payment in lieu of contributions which is not received on or before the due date is delinquent. An employer who fails to file on or before the due date a contribution and wage report shall pay to the department for each such delinquent report, subject to waiver for good cause shown, a penalty as provided in Iowa Code section 96.14(2). No penalty shall apply to delinquent reports when the employer proves to the satisfaction of the department that no wages were paid.

b. An employer who has not paid contributions or payments in lieu of contributions on or before the due date shall pay interest on the whole or part thereof remaining unpaid at the rate of 1 percent per month, or 1/30 of 1 percent for each day or fraction thereof, from and after the due date until payment is received by the department unless good cause is shown why such interest shall be waived.

23.8(7) Due date upon demand. If the department finds that the collection of any contribution or payment in lieu of contributions will be jeopardized by delaying the collection thereof until the date otherwise described, upon written demand by the department, such contribution or payment in lieu of contribution shall become immediately payable, and shall become delinquent.

23.8(8) Extension of time. Upon written request filed with the department before the due date of any contribution report, the department may, for good cause shown, grant an extension in writing of the time for filing of the report and the payment of the contributions, but no extension shall exceed 30 days and no extension shall postpone payment beyond the last day for filing tax returns under the Federal Unemployment Tax Act. If an employer who has been granted an extension fails to pay the contribution on or before the termination of the period of such extension, interest shall be payable from the original due date as if no extension had been granted.

This rule is intended to implement Iowa Code section 96.7(1).

871—23.9(96) Delinquency notice. Within 20 days from the delinquent date for filing Form 65-5300, Employer's Quarterly Contribution and Payroll Report, a Delinquency Notice, Form 65-5313, will be sent to all employers from whom no report has been received. Such notice shall state the employer's name, account number, experience rate, and the quarter for which the report needs to be made. The notice will be sent to the employer's last-known address or place of business. If the employer has sold or dissolved the business, the employer shall fill out the reverse side of the notice, Form 65-5313 RVS, showing the date of the last wages paid and the date of last employment. If the business was sold or transferred, the employer shall show the name and address of the successor, and the employer's future mailing address. Such notice shall then be returned to the department for a change of status determination.

871—23.10(96) Payments in lieu of contributions.

23.10(1) An employer, who has qualified for reimbursement payments or has had an election to become a reimbursable employer approved, shall pay to the department for the unemployment trust fund an amount equal to the amount of regular benefits paid including payments which are based on wage credits transferred to this employer from another employer, and if extended benefits are in effect, one-half of the extended benefits paid; except, governmental entities will pay 100 percent of extended benefits after January 1, 1979.

23.10(2) At the end of each calendar quarter, the department shall bill each reimbursable employer on Form 65-5324, Notice of Reimbursable Benefit Charges. This statement shall be sent to the employer within 30 days of the quarter for which the benefits are charged and shall set out the social security number, name and amount of benefits charged to the employer for each such claimant together with the amount of any previous charges remaining unpaid and interest to the end of the quarter for which the statement is rendered. Payment of each quarter's charges shall be due within 30 days of the date the statement is sent. If the employer fails to reimburse the department within the period prescribed by these rules the department may attempt collection of the amount due including any of the following methods:

- a. Forfeiture of bond.
- b. Issuance of notice of assessment and lien, Form 68-0043.
- c. Issuance of notice of jeopardy assessment, Form 68-0138.
- d. Any other actions as prescribed by the law or these rules including collection by distress warrant.

Interest on delinquent reimbursable benefits shall be charged at the rate of 1 percent per month or one-thirtieth of 1 percent per day from the date payment was due until the date of payment.

This rule is intended to implement Iowa Code section 96.7(8).

871—23.11(96) Identification of workers covered by the Iowa employment security law.

23.11(1) Each employer shall ascertain the federal social security account number of each worker employed by such employer in employment subject to the Iowa employment security law.

23.11(2) The employer shall report the worker's federal social security account number in making any report required by the department of workforce development with respect to the worker.

23.11(3) If any employer has in employment a worker engaged in employment who does not have an account number, such employer shall request the worker to show a receipt issued by an officer of the social security board acknowledging that the worker has filed an application for an account number. The receipt shall be retained by the worker. In making any report required by the department of workforce development with respect to such a worker, the employer shall report the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the worker exactly as shown in the receipt.

23.11(4) If a worker failed to report to the employer such employee's correct federal social security account number or fails to show the employer a receipt issued by an office of the social security board acknowledging that such worker has filed an application for an account number, the employer shall inform the worker that Regulation 106 of the Internal Revenue Service, United States Treasury Department, under the Federal Insurance Contribution Act provides that:

a. Each worker shall report to every employer for whom the worker is engaged in employment, a federal social security account number with the worker's name exactly as shown on the account number card issued to the worker by the social security board.

b. Each worker who has not secured an account number shall file an application for a federal social security account number on Form SS-5 of the Treasury Department, bureau of internal revenue. The application shall be filed on or before the seventh day after the date on which the worker first performs employment for wages, except that the application shall be filed on or before the date the worker leaves employment if such date precedes such seventh day. Copies of Form SS-5, application for a social security account number, can be secured at the field office of the social security board nearest the worker's place of employment or the local post office.

c. If, within 14 days after the date on which the worker first performs employment for wages for the employer, or on the day on which the worker leaves the employ of the employer, whichever is the earlier, the worker does not have a federal social security account number, and has not shown the employer a receipt issued to the worker by an office of the social security board acknowledging that the worker has filed an application for an account number, the worker shall furnish the employer an application on Form SS-5, completely filled in and signed by the worker. If a copy of Form SS-5 is not available, the worker shall furnish the employer a written statement, signed by the worker, of the date of the statement, the worker's full name, present address, date and place of birth, father's full name, mother's full name before marriage, worker's sex, and a statement as to whether the worker had previously filed an application on Form SS-5 and, if so, the date and place of such filing. Furnishing the employer with an executed Form SS-5, or statement in lieu thereof, does not relieve the worker of the obligation to make an application on Form SS-5 as required in paragraph "b" of this subrule.

23.11(5) The employer shall inform the worker, in instances in which the information is pertinent, that in accordance with the Regulation 106 of the Internal Revenue Service, United States Treasury Department:

a. When a federal social security account number card is lost, the worker may secure a duplicate card by applying at the field office of the social security board nearest the worker's place of employment.

b. Any worker may have an account number changed at any time by applying to a field office of the social security board and showing good reason for a change. Any worker whose name is changed by marriage or otherwise, or who has stated incorrect information on Form SS-5, should report such change or correction to a field office of the social security board. Copies of Form OAAN-7003, Employee's Request for Change in Records, for making such reports may be obtained from any field office of the social security board (or the central office of the workforce development department or a local workforce development office).

c. Any worker who has more than one social security account number shall report all numbers to the field office of the social security board nearest the worker's place of employment (to a workforce development center).

23.11(6) If the worker fails to comply with the requirements enumerated under subrule 23.11(4), the employer shall execute a Form SS-5, application for a social security account number, or statement, signed by the employer, setting forth as fully and as clearly as practicable the worker's full name, present or last-known address, date and place of birth, father's full name, mother's full name before marriage, the worker's sex, and a statement as to whether an application for an account number has previously been filed by the worker, and if so, the date and place of such filing. This statement, or the executed Form SS-5 signed by the employer, shall be attached to any report required by the workforce development department with respect to such a worker.

871—23.12 Reserved.

871—23.13(96) Employer elections to cover multistate workers.

23.13(1) Arrangement. The following rule shall govern the workforce development department in its administrative cooperation with other states subscribing to the interstate reciprocal coverage arrangement, hereinafter referred to as the arrangement.

23.13(2) Definitions. As used in this rule, unless the context clearly indicates otherwise:

a. "*Jurisdiction*" means any state of the United States, the District of Columbia, Puerto Rico, or, with respect to the federal government, the coverage of any federal unemployment compensation law.

b. "*Participating jurisdiction*" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated.

c. "*Agency*" means any officer, board, department, division, commission or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

d. "*Interested jurisdiction*" means any participating jurisdiction to which an election submitted under this rule is sent for its approval; and interested agency means the agency of such jurisdiction.

e. "*Services customarily performed by an individual in more than one jurisdiction*" means services performed in more than one jurisdiction during a reasonable period, if the nature of the service gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

f. "*Total wages paid in covered employment*" as it appears in section 96.7(2) for computing the current reserve fund ratio, means total wages paid in covered employment, subject to contributions, as provided in section 96.7, and does not include wages paid by reimbursing employers, whose payments to the unemployment fund, in lieu of contributions, are made in accordance with section 96.7.

23.13(3) Submission and approval of coverage elections under the interstate reciprocal coverage arrangement.

a. Any employing unit may file an election, on Form 309-1040, to cover under the law of a single participating jurisdiction all of the services performed for the employing unit by any individual who customarily works for the employing unit in more than one participating jurisdiction. Such an election may be filed, with respect to an individual, with any participating jurisdiction in which:

- (1) Any part of the individual's services are performed;
- (2) The individual resides; or
- (3) The employing unit maintains a place of business to which the individual's services bear a reasonable relation.

b. The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election. If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable, and shall notify the agency of the elected jurisdiction accordingly. In case its law so requires, any such interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in the election.

c. If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons therefor.

d. Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

e. In case any such election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw its election within ten days after being notified of such action.

23.13(4) Effective period of election.

a. *Commencement.* An election duly approved under this rule shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

b. *Termination.*

(1) The application of an election to any individual under this rule shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one particular jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such findings is mailed to all parties affected.

(2) Except as provided in subparagraph (1) of this paragraph, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(3) Whenever an election under this rule ceases to apply to any individual, under subparagraph (1) or (2) of this paragraph the electing unit shall notify the affected individual accordingly.

23.13(5) Reports and notices by the electing unit.

a. The electing unit shall promptly notify each individual affected by its approved election on Form 68-0601 supplied by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.

b. Whenever an individual covered by an election under this rule is separated from employment, the electing unit shall again notify the individual forthwith, as to the jurisdiction under whose unemployment compensation law the individual's services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify the individual as to the procedure for filing interstate benefit claims.

c. The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires such individual to perform services in a new participating jurisdiction.

871—23.14(96) Elective coverage of excluded services.

23.14(1) An employing unit having services performed for it which are not subject to the compulsory coverage provisions of the Act may file an application Form 68-0598, Voluntary Election, for voluntary election to become an employer under the law or to extend its coverage to individuals performing services which do not constitute employment as defined in the law.

a. In no case shall an elective coverage agreement under Iowa Code section 96.8(3) be approved unless and until it has been established that the employing unit making application for elective coverage is normally and continuously engaged in a regular trade, business or occupation.

b. An application for elective coverage shall be disapproved if the department finds that the employing unit at the time of making the application was insolvent or expected to discontinue business for any reason within one year from the date the application is filed, or that the employing unit is not normally and continuously engaged in a regular trade, business or occupation.

c. The department may, on its own motion, request a written statement as to why an employing unit wishes to file an election to become a subject employer as provided for in Iowa Code section 96.8(3) “a” and may request evidence of financial stability.

d. Any written election for a period prior to the date of filing shall become binding upon approval by the department, and notification of the approval shall be forwarded to the employer. If for any reason the department does not approve such voluntary election, the employing unit shall be notified of the reasons why such approval was withheld.

e. The date of filing of a voluntary election shall be deemed to be the date on which the written election, signed by a legally authorized individual, is received by the department.

f. Effect of election approval. Each approval of an election shall state the date as of which the approval is effective. The first contribution payment of any employing unit which elects to become a covered employer shall become due and shall be paid on or before the due date of the reporting period during which the conditions of becoming a covered employer by election are satisfied, and shall include employer contributions with respect to all wages paid on and after the date stated in such approval (as of which such employing unit becomes a covered employer), up to and including the last pay period in the reporting period in which the conditions of becoming a covered employer by election are satisfied.

23.14(2) Reserved.

871—23.15 and 23.16 Reserved.

871—23.17(96) Group accounts.

23.17(1) Reimbursable employers who desire to form a group account or reimbursable employers who wish to be added to an existing group account shall apply on Form 68-0534, Application for a Group Account.

a. New group accounts. The application shall list each proposed member and must be signed by each proposed member and shall set out one member as agent for the group with respect to all dealings with the workforce development department.

b. Adding a member or members to an already existing group. The application shall list all members of the group including the new member(s) and shall be signed by all members of the group including the new member(s). The application shall set out one member as agent for the group, or an authorized agent of the group, with respect to all dealings with the workforce development department.

23.17(2) A government entity shall not be allowed to form a group with a nonprofit organization(s).

23.17(3) No application for a group account shall be approved if any member of the group is delinquent in the payment of contributions, interest or penalty, or in the filing of reports, or in the payment of reimbursable benefits.

23.17(4) If the application is denied by the department, a notice stating the reasons for denial will be sent to the agent for the group. A new application may be submitted by the group at any time.

23.17(5) If the application is approved by the department, a notice will be sent to the agent for the group. Such approval shall be effective with the first day of the quarter in which the application is received.

23.17(6) Such group account shall continue for a minimum period of one year from the first day of the quarter in which the application for a group account was received and no member may leave the group during such year except that withdrawal shall be allowed where the member's liability has terminated under Iowa Code section 96.8(2) or 96.8(4).

a. If a new member(s) is added to the group during the first year of the group's existence, the group shall continue for one year from the first day of the quarter in which the application to add the member is received and no member may leave the group during such year except where the member's liability has terminated under Iowa Code section 96.8(2) or 96.8(4).

b. If a new member(s) is added to the group after the group has been in existence for one year, only the new member(s) shall be obligated to remain with the group for an additional one-year period from the first day of the quarter in which such member joined the group.

23.17(7) After the group has been in existence for one year, unless provided for differently in 23.17(6) "a" or 23.17(6) "b," any member may withdraw by providing the agent for the group and the department with notice of the withdrawal in writing. Such withdrawal shall become effective with the first day of the quarter following the quarter in which notice is received by the department. For the withdrawal to be effective with the first day of the quarter immediately following the first year of the group's existence, notice of withdrawal must be filed during the last three months of the first year of the group's existence.

23.17(8) A bond or other security equal to 2.7 percent of the taxable wages paid by all members of a nonprofit group in the four calendar quarters immediately preceding the first day of the quarter in which the application is received, shall be required within 30 days of the notice of approval. If one or more members of the group did not pay wages in each of such four calendar quarters, the amount of the bond or deposit shall be determined by the department by using information as is available to estimate the amount of the total taxable wages of the group for a normal four-calendar-quarter period.

23.17(9) A government group shall not post bond; however, should such group or any member(s) thereof default with respect to any payments due the department, the amount of such delinquency shall be deducted from any further moneys due to the members of the group by the state as provided in Iowa Code section 96.14(2).

23.17(10) Each member of a group shall be jointly and severally liable for any defaults by any members of the group with respect to unpaid reimbursable benefit charges and any interest and penalty. All charges to the members of a group shall be in accordance with the provisions of Iowa Code section 96.7(13).

23.17(11) Upon the formation of a group, all benefits paid after the effective date of the group based upon wages paid by any member(s) of the group shall be charged to the group regardless of when the wages upon which such benefits were earned except those benefits based upon wages paid when the member(s) was a nonprofit contributory employer. Benefits based on wages paid when a member(s) was a government contributory employer that are paid after the effective date of the group will be charged to the group.

23.17(12) Upon the occasion of a member withdrawing from a group and the member continues to be a liable employer, such member shall be liable for the payment of all benefits paid after the date of withdrawal and attributable to employment with such member regardless of when the wages upon which the benefits are based were earned.

23.17(13) Liability for benefits upon termination of a group or withdrawal of a defaulting or no longer liable member.

a. Notwithstanding subrules 23.17(1) to 23.17(12), when a group is terminated upon the application of all members or under subrule 23.17(7) where there are only two members, liability for any reimbursable benefits which the department concludes are not collectible from a defaulting ex-member(s) of the group and said benefits are based upon wages paid prior to or while the group was in existence shall lie with each of the former members of the group jointly and severally.

b. Notwithstanding subrule 23.17(12) when an ex-member of a group is in default at the time of withdrawal from the group or withdraws under subrule 23.17(7) and it is determined that the benefits are not collectible from such member, the group has remained in existence, and the benefits so paid are based upon wages paid prior to or while the ex-member was a member of the group, the group shall be held liable for the payment of such benefits.

23.17(14) Agent's responsibilities.

a. The agent for a group shall be responsible, on behalf of the group members, for all the duties of an employer as set out in the Code and these rules. Specifically such agent shall be responsible for the pro rata apportioning of benefit charges to each member of the group as set out in Iowa Code section 96.7(13) or be based on an experience rating system approved by the department and shall accept all legal services and notices on behalf of all members of the group.

b. All correspondence on behalf of the group shall be between the agent for the group and the department.

c. Each member of a group shall submit a quarterly payroll report to the group's agent who shall combine such reports into one report on Form 65-5300, Employer's Contribution and Payroll Report, and shall submit such combined report to the department on or before the delinquent date for such quarter.

d. The agent shall also submit Form 65-5305, Summary of Quarterly Payroll by Location, designating which page(s) of the combined payroll report belongs to each member of the group in the manner provided in 871—subrules 22.13(3) to 22.13(5).

e. Should an agent member withdraw from a group, or resign as agent, it shall immediately advise the department of its intent in writing. Such notice must be made at least 90 days prior to the date of withdrawal. The department shall notify the remaining members of the group of the withdrawal and shall request that the group elect a new agent. Such election must be held and the department notified of the result within 30 days of the notice of the withdrawal from the department. Failure to notify the department within 30 days of the new agent shall result in the termination of the group by the department.

23.17(15) Transfers and successorships.

a. If a member of a group sells or otherwise transfers its business to a nonmember and the acquiring employer has made or, at the time of acquisition is eligible to and makes an election to make payments in lieu of contributions, the successor shall assume the position of the predecessor in the group as of the date of acquisition.

b. If a member of a group sells or otherwise transfers a substantial portion of its business to a nonmember and the predecessor is a nonprofit organization and the successor is a governmental entity, the successor shall not acquire membership in the group.

c. If a member of a group sells or otherwise transfers a substantial portion of its business to a nonmember and the predecessor is a government entity and the successor is a nonprofit organization, the successor shall not acquire membership in the group.

d. If a member of a group sells or otherwise transfers a substantial portion of its business to an organization or other entity not eligible to make an election to make payments in lieu of contributions, the successor shall not acquire membership in the group.

e. A member of a group may become a successor to any other organization and remain in the group so long as the member remains a nonprofit organization or governmental entity.

f. Successors which are not permitted to enter a group under 23.17(15) "*b*" to 23.17(15) "*d*" shall be held liable for benefits which are based upon wages paid by the predecessor the same as provided in subrule 23.17(12) for members withdrawing from a group.

This rule is intended to implement Iowa Code section 96.7(13).

871—23.18(96) Nature of relationship between employer-employee.

23.18(1) *Commission sales persons and insurance solicitors.* Commission sales persons generally are considered employees subject to the law regardless of the method of their remuneration unless they are independent contractors.

23.18(2) *Directors and officers of a corporation.* Directors who receive a nominal fee for attending meetings and perform no other services are not employees of the corporation. Officers of associations and corporations are included as employees if they perform services. Officers of a corporation who perform services for the corporation are employees.

23.18(3) *Members of family.*

a. Services performed by an individual in the employ of a son, daughter, or spouse, and services performed by a child under the age of 18 in the employ of a father or mother are exempt from the provisions of this Act.

b. Services performed by a foster parent in the employ of a foster child, by a stepparent in the employ of a stepchild, and by a child under the age of 18 years in the employ of a stepparent or foster parents are exempt from the provisions of this Act.

23.18(4) *Aliens.* This Act makes no distinction between citizens and lawful aliens. Lawful aliens in nonexempt employment are counted in determining whether the employer is subject to the Act and are covered by the contribution and benefit provision.

23.18(5) *Aged and minor employees.* Contributions are payable upon services rendered by an employee regardless of the age of the employee.

23.18(6) *Family employment.* Family employment includes parents, wife or husband and minor children under the age of 18 years working for an individual proprietor. This exclusion does not apply when the employing unit is a partnership unless an exempt relationship is held to each member of the partnership. This exclusion does not apply to corporations.

23.18(7) *Partners.* Bona fide partners are not considered employees even though they receive salaries.

23.18(8) *Apprentices-clerks.* This law makes no exceptions for persons serving a clerkship or other form of apprenticeship.

23.18(9) *Members of a limited liability company.* Members of a limited liability company that perform services other than for the purpose of acquiring membership in the limited liability company are employees.

871—23.19(96) Employer-employee and independent contractor relationship.

23.19(1) The relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right to discharge or terminate a relationship is also an important factor indicating that the person possessing that right is an employer. Where such discharge or termination will constitute a breach of contract and the discharging person may be liable for damages, the circumstances indicate a relationship of independent contractor. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools, equipment, material and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, that individual is an independent contractor. An individual performing services as an independent contractor is not as to such services as employee under the usual common law rules. Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, occupation, business or profession, in which they offer services to the public, are independent contractors and not employees.

23.19(2) The nature of the contract undertaken by one for the performance of a certain type, kind, or piece of work at a fixed price is a factor to be considered in determining the status of an independent contractor. In general, employees perform the work continuously and primarily their labor is purchased, whereas the independent contractor undertakes the performance of a specific job. Independent contractors follow a distinct trade, occupation, business, or profession in which they offer their services to the public to be performed without the control of those seeking the benefit of their training or experience.

23.19(3) Employees are usually paid a fixed wage computed on a weekly or hourly basis while an independent contractor is usually paid one sum for the entire work, whether it be paid in the form of a lump sum or installments. The employer-employee relationship may exist regardless of the form, measurement, designation or manner of remuneration.

23.19(4) The right to employ assistants with the exclusive right to supervise their activity and completely delegate the work is an indication of an independent contractor relationship.

23.19(5) Whether the relationship of employer and employee exists under the usual common law rules will in doubtful cases be determined upon an examination of the particular facts of each case.

23.19(6) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

23.19(7) All classes or grades of employees are included within the relationship of employer and employee. For example, superintendents, managers and other supervisory personnel are employees.

871—23.20(96) Employment—student and spouse of student.

Wages earned by a student who performs services in the employ of a school, college or university at which the student is enrolled and is regularly attending classes (either on a full-time or part-time basis) cannot be used for claim or benefit purposes.

Wages earned by an individual who is a full-time employee for a school, college or university whose academic pursuit is incidental to the full-time employment, would be used for claim and benefit purposes.

Wages earned by the spouse of such a student in employment with the educational institution attended by the student cannot be used for benefit purposes if the employee-spouse is told prior to commencing the employment that the work is part of a program to provide financial assistance to the student and is not covered by unemployment insurance.

This rule is intended to implement Iowa Code section 96.19(18) “g”(6).

871—23.21(96) Excluded employment—student. Wages earned by a student who is enrolled at a nonprofit or public educational institution under a program taken for credit at such institution that combines academic instruction with work experience are normally excluded from the definition of employment. Provided, however, that no work performed by such individual in excess of the hours called for in the contract between the school and the employer or performed in a period of time during which the institution is on a regularly scheduled vacation and for which such student receives no academic credit shall be excluded from said definition.

This rule is intended to implement Iowa Code section 96.19(18) “g”(6).

871—23.22(96) Employees of contractors and subcontractors.

23.22(1) If one employer contracts with another employing unit for any work which is part of the first employer’s usual business, the first employer is liable for any contributions based on wages paid by the second employing unit in connection with the work providing the second employing unit is not liable to pay contributions.

23.22(2) Employees of the second contractor are counted as employees of the first contractor while performing services on the contract for the first contractor.

871—23.23(96) Liability of affiliated employing units. An employing unit not qualifying as a covered employer under any other section of this law shall be a liable employer if together with one or more employing units owned or controlled by the same interest, the combined employment or quarterly gross wages (counting together the number of workers or the combined gross quarterly wages of each enterprise) would total one or more workers in a portion of a day in each of 20 different weeks or have a combined gross quarterly payroll which equals or exceeds \$1,500 in a calendar quarter.

871—23.24(96) Localization of employment—employees covered—exemption.

23.24(1) The employment of a person, considered from the standpoint of the place where the services are performed, shall be determined by the department. Each case will be reviewed; and based on its merits, a decision shall be made. The following guidelines will be followed:

a. Services performed in a state are considered localized in that state and contributions are payable to such state. It makes no difference where the employer is located in this instance.

b. Where services are performed equally between two states by employees, the base of operation concept is involved. The place of more or less permanent nature from which the employee works is a state where contributions are payable. That is to say, the state where the employee starts work and to which the employee customarily returns is the state that collects the contributions. In this type of a case, the department has the right to waive coverage (if Iowa was the other state) to another jurisdiction (state of the base of operation) as long as the employee is properly covered by the other state.

c. When there is no direct relation between base of operations (the place of more or less permanent nature from which the employee works) and the place from which services are directed and controlled, the state where the employer is located and who controls or has the right to control the employee's services is the state that should be paid the contributions. The place of immediate control and not ultimate control is a significant factor. The place of direction and control is considered only if there is no base of operations. Therefore, if services are not localized and there is no base of operation in any state where services are performed, the place of direction and control governs as though those same services are performed therein.

d. If the services of the employee are not localized in a state, the base of operation is not involved or the place where services are directed and controlled is not applicable, then the contribution is payable to the state where the employee's residence is located, provided some services are performed in that state.

23.24(2) Reserved.

This rule is intended to implement Iowa Code section 96.19(18) "b."

871—23.25(96) Domestic service.

23.25(1) Services of a household nature performed by an individual in or about the private home of the person by whom the individual is employed or performed in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority by which the individual is employed are included within the term "domestic service."

23.25(2) A private home is the fixed place of abode or residence of an individual or family, including the house and the lands on which the house stands.

23.25(3) It is the service of a general household nature, ordinarily and customarily performed as an integral part of the upkeep and maintenance of a dwelling, residence or private home. In general, services of a household nature in or about a private home include services rendered by cooks, maids, butlers, valets, laundry persons, furnace persons, babysitters, gardeners, and chauffeurs of automobiles for family use. In addition, services performed by guards, gatekeepers, or nurse to members of the household are covered.

23.25(4) The services above enumerated are not covered under the term "domestic service" if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, or commercial offices or establishments.

23.25(5) The term “domestic service” does not include the service of a skilled mechanic engaged in recognized independent craft not habitually rendered as a part of ordinary household duties such as service rendered by carpenters, blacksmiths, electricians, and plumbers. However, a handy person employed on a full-time basis around the employer’s private home to care for the furnace, wash windows, lay carpet, mend furniture, and on occasion perform necessary carpentry, plumbing, electrical or painting work would nevertheless be engaged in domestic service. Musicians engaged to render services in and around a private home for the enjoyment of the members of the household and the guests are exempt. Similarly, private secretaries and part-time tutors are within the exemption, even though performing services within the employer’s home.

23.25(6) Domestic ordinarily means a household servant or one who works for an employer in the employer’s home. The word domestic is generic and not a specific designation.

23.25(7) Services of a household nature performed in or about the club rooms or house of a local college club, or in or about the club rooms or house of a local chapter of a college fraternity or sorority, by a student who is enrolled and regularly attending classes at a school, college, or university are excepted from employment. For the purpose of this exception, the statutory tests are the type of services performed by the employee, the character of the place where the services are performed, and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university.

23.25(8) In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by service workers which include but are not limited to cooks, janitors, laundry persons, furnace persons, handy persons, gardeners and housekeepers.

23.25(9) A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the services performed there are not covered under the term “domestic service.”

23.25(10) The term “school, college, or university” within the meaning of this exception is to be taken in its commonly or generally accepted sense.

23.25(11) Where an individual is employed by a domestic service organization to perform domestic services in a private home, the individual is an employee of the service firm, not the household-er. The firm is responsible for paying the worker, for withholding taxes from the wages, and for paying social security taxes, etc.

This rule is intended to implement Iowa Code section 96.19(7) “a.”

871—23.26(96) Definition of a farm—agricultural labor.

23.26(1) “Farm” as used in section 96.19(6) “g”(3) and as used in these rules means one or more plots of land not necessarily contiguous, including structures and buildings, used either primarily for raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry and furbearing animals and wild-life or both such uses, if the activities conducted on the plot or plots of land have as their purpose the accomplishment of an objective which is agricultural in nature.

23.26(2) The definition of farm given in subrule 23.26(1) includes, but is not limited to, nurseries, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities. A parcel of real property or a portion of a parcel of real property which is used primarily for the raising of nursery stock from seeds, cuttings or transplanted stock is a farm. If any parcel of real property or a portion of a parcel of real property is used both for the raising of nursery stock and for display of nursery stock or allied products for sale, the parcel or portion is not a farm if the raising is not the primary operation. A parcel of real property or a portion of a parcel of real property which is used primarily to display nursery stock for sale, or to display an allied product for sale, or both, is not a farm. Allied product, as used in this rule, includes but is not limited to, garden supplies, lawn supplies, tools, equipment, fertilizers, sprays, insecticides or pottery.

23.26(3) If other than incidental sales of an allied product are made in connection with a nursery, the operations in connection with the sales area are commercial operations as distinguished from ordinary farm operations and services performed with respect to the sales areas are not agricultural labor.

23.26(4) A plot of land used primarily for the raising of Christmas trees is a farm.

23.26(5) The following shall be used to determine whether or not services are agricultural exempt labor.

a. Services performed by an individual on a farm, in the employ of any owner, tenant or operator in connection with the operation constitutes agricultural labor.

(1) Provided the services are on the farm on which the materials in their raw or natural state were produced.

(2) If processing, packing, packaging, transportation, or marketing is carried on as an incident to ordinary farming operation.

b. If the service is performed as an incident to industrial, manufacturing or commercial operation it does not constitute agricultural labor. (Example: Services performed for an insurance company in repair and construction of farm buildings do not constitute agricultural labor.)

23.26(6) Services performed on nonfarm property while in the employ of one who is not the owner, tenant or operator of the farm to which the operation relates or any service rendered in connection with the maintenance and repair of equipment, used in operation on the farm, as well as related collection, clerical and bookkeeping services, are not agricultural labor.

23.26(7) Services performed in the handling, processing, etc., of any agricultural or horticultural commodity are excluded as agricultural employment if performed in the employ of the owner, tenant, or other farm operator, only if the commodity is in a nonmanufactured state and only if the operator produced more than half of the commodity with respect to which the service was performed.

23.26(8) Aerial seeding, fertilizing, spraying, dusting, etc. The aerial seeding, fertilizing, spraying, dusting, etc., of farm acres may be properly said to be performed in connection with the cultivation of the soil, the raising of agricultural or horticultural commodities. Services performed on a farm, in the employ of any person, in connection with such operations are agricultural labor within the meaning of the Iowa employment security law. This includes services related to the mixing or loading into the airplane the spraying or dust material, as well as service related to the measuring of the swaths and the marking and flagging of the fields, and is considered agricultural labor as long as it is performed on the farm. However, services performed on property other than the farm for which they are being performed (such as commercial airport, leased or rented landing strip, etc.), in connection with the mixing and loading of the spray and dusting material, as well as services performed in delivering such material to the mixing or loading point, are not agricultural labor and are covered employment under the Iowa employment security law.

23.26(9) If the employer does not own or operate the farm which is being sprayed or dusted, any service related to employees in connection with maintenance and repair of the aircraft, trucks, or other equipment used in those operations, as well as related collection, clerical and bookkeeping services, are not agricultural labor and are not exempt under the Iowa employment security law.

23.26(10) Services performed on a farm in the employ of any person in connection with hatching poultry are agricultural labor. A plot of land together with the structures and buildings located off the farm, devoted to the hatching of poultry, is not considered to be a farm. Any service, under any contract of hire, performed off the farm in connection with the hatching of poultry shall not be considered exempt agricultural labor.

23.26(11) Executive, supervisory, administrative, clerical, stenographic, and office work are not exempt as agricultural labor although they may be rendered on a farm and in relation to a farm.

23.26(12) Services performed on a farm incidental to the overall commercial activities which are not incidental to ordinary farming operation or directly related to the farming operation are not exempt as agricultural labor.

23.26(13) Services performed in connection with the processing of agricultural commodities performed on a farm, for a farm operation, are not exempted as agricultural labor unless one-half or more of the commodities processed are produced by the farm operator.

23.26(14) Services performed in exempt agricultural employment as defined in Iowa Code section 96.19(18) “g”(3) or rule 23.26(96) by an agricultural employee one-half or more of any calendar month shall be considered exempt agricultural employment the whole of that calendar month.

871—23.27(96) Exempt employment in the employ of a church, association of churches or an organization which is operated primarily for religious purposes.

23.27(1) The word “*church*” is used in its limited sense and is synonymous with an individual house of worship maintained by a particular congregation. Any service by an individual for a church, convention or association of churches is excluded from coverage. However, the exclusion does not apply to service performed for an organization which may be religious in orientation unless it is operated primarily for religious purposes and is operated, supervised, controlled or principally supported by a church (or a convention or association of churches). Thus, the service of the janitor of a church is excluded, but the service of a janitor for a separately incorporated college, although it may be church related, is covered.

23.27(2) Service for a college devoted primarily to the preparation of students for the ministry is exempt, as is service for a novitiate or a house of study, training candidates to become members of religious orders. On the other hand, a church-related (separately incorporated) charitable organization (such as an orphanage or a home for the aged) is not considered, under this Act, to be operated primarily for religious purposes.

23.27(3) The exclusion of service performed by ministers in the exercise of their ministry and by members of a religious order in performing the duties required by such order applies only when such service is performed for nonprofit organizations ordinarily required to be covered by the Iowa employment security law.

23.27(4) A minister is ordained, commissioned, or licensed, if such minister has been vested with ministerial status in accordance with the procedure followed by the particular church denomination. However, such minister does not have to be connected with a congregation. Ministerial authority continues until revoked by the church.

23.27(5) The term “*exercise of the ministry*” includes: the conduct of religious worship and the ministration of sacerdotal functions; service performed in the control, conduct, and maintenance of a religious organization under the authority of a religious body constituting a church or church denomination, or an organization operated as an integral agency of such a religious organization or of a church or church denomination; service performed for any organization under an assignment or designation by a church (not including cases in which a church merely helps a minister by recommending such minister for a position involving nonministerial services for an organization not connected with the church); and missionary service or administrative work in the employ of a missionary organization. Control, conduct, and maintenance of an organization do not include services such as operating an elevator, or being a janitor, but refers to services performed in the directing, management, or promotion of the activities of the organization.

23.27(6) Accordingly, service of a clergyman (clergywoman) as a chaplain in an orphanage or in an old-age home is excluded since such service is in the exercise of a ministry as is the service of members of a teaching or nursing order who are engaged in teaching or nursing. In the case of a member of a religious order, the criterion is whether the order requires the performance of such service.

23.27(7) School coverage.

a. Schools that are not separately incorporated and are affiliated with a church are exempt from insured employment because their employees are in the direct employ of a church or convention or association of churches.

b. Schools that are separately incorporated and are affiliated with a church are exempt from insured employment if such schools are operated primarily for religious purposes.

c. Schools that are not affiliated with a church are covered employers with covered employment.

"Affiliated" as used in this rule means operated, supervised, controlled, or principally supported by a church or convention or association of churches. A school which is operated primarily for religious purposes must have as its chief and principal purpose for operation a religious orientation. The school must have as its purpose of first or highest rank of importance the religious indoctrination of its students.

This rule is intended to implement Iowa Code section 96.19(18) "a" (6)(a) and (c).

871—23.28(96) Successor.

23.28(1) Definition of "*successor employer*" as used in Iowa Code section 96.7 and these rules means an employing unit which:

a. Acquired the organization, trade or business, or substantially all the assets of an employing unit that was subject to the provisions of chapter 96 prior to the acquisition, regardless of whether the acquirer was an employing unit prior to the acquisition. The acquiring employer must continue to operate the enterprise or business.

b. An employing unit that acquired a severable portion of the business of an employer who is subject to chapter 96 providing:

(1) The portion of the business or enterprise acquired would have in itself met the requirements of section 96.19(16) "a."

(2) An application is made for a transfer of the records of the severable portion transferred within 60 days from the date of transfer.

(3) The transfer of records meets the approval of the predecessor and department and adequate information is furnished to meet the requirements.

c. Transfer or discontinuance of business. A period of one year has been defined as any four consecutive calendar quarters.

23.28(2) An "*organization*," "*trade*" or "*business*" as used in section 96.19(5) "b" is acquired if an employing unit acquires factors of an employer's organization, trade or business sufficient to constitute an entire existing going business unit as distinguished from the acquisition of merely assets from which a new business may be built. The question of whether an organization, trade or business is acquired is determined from all the factors of the particular case. Among the factors to be considered are:

- a. The place of business.
- b. The staff of employees.
- c. The customers.
- d. The good will.
- e. The trade name.
- f. The stock in trade.
- g. The accounts receivable.
- h. The tools and fixtures.
- i. Other assets.

23.28(3) Substantially all of the assets as used in section 96.19(5) "b" are acquired if an employing unit acquires substantially all of the assets of any employer which generate substantially all of the employment, except those retained incident to the liquidation of obligations.

23.28(4) A segregable and identifiable part of enterprise as used in Iowa Code section 96.7(3) "b" is acquired if an employing unit acquires factors of any employer's organization, trade or business sufficient to constitute an existing separable going business unit as distinguished from the acquisition of merely assets from which a new business may be built. The part of the business acquired, if considered separately, would have been liable under section 96.19(16) "a." The question of whether a distinct and severable portion is acquired is determined from all of the factors of the particular case. Among the factors to be considered are:

- a. The place of business.
- b. The staff of employees.
- c. The customers.
- d. The good will.

- e. The trade name.
- f. The stock in trade.
- g. The accounts receivable.
- h. The tools and fixtures.

23.28(5) “*Successor liability*” as used in Iowa Code chapter 96, and these rules, occurs for the acquiring employing unit when there is a transfer of the predecessor’s assets or other physical components necessary to continue the operation of the enterprise or business to the successor employer and the successor employing unit must continue to operate the business to the same basic extent as if there had been no change in the ownership or control of the business or enterprise.

23.28(6) Successor liability will be found to occur. If an enterprise or business is leased to a covered employer and any party or entity purchases or assumes the covered employer’s lease, or any party or entity acquires a new lease and substantially all of the assets of the covered employer, and the new lessee continues the operation of the enterprise or business to the same basic extent as though there had been no change in the ownership or control of the enterprise or business, such party or entity acquires the covered employer’s experience.

23.28(7) Successor liability will not be found to occur.

a. Where a covered employing unit is operating an enterprise or business under a lease agreement and it is terminated, there will be no transfer of the covered employing unit’s experience unless the lessor takes over and continues to operate the enterprise or business in which case the lessor will be considered the successor to the covered employer’s experience.

b. Where an enterprise or business is leased to a covered employing unit, and the lease agreement has terminated with the lessor acquiring a new lessee, the new lessee is not considered to be a successor to the experience of the predecessor lessee unless the new lessee acquires substantially all of the assets of the predecessor lessee and the new lessee continues the operation of the enterprise or business to the same basic extent as though there had been no change in the ownership or control of the enterprise or business.

c. A franchise agreement will be treated the same as lease agreement.

d. If the bankruptcy court closes an enterprise or business, the court becomes the agent for the bankrupt employer.

(1) Where the court closes the enterprise or business and starts liquidating procedures, the employer’s account is placed in an inactive status subject to termination and no successorship or transfer of the employer’s experience is involved, or

(2) If the court appoints a trustee or receiver to continue the operation of the enterprise or business, there will be no transfer of employment experience. The account address will be corrected to include the name of the trustee or receiver for mailing purposes. If the trustee or receiver sells the enterprise or business as a going enterprise the successor will be entitled to the predecessor’s experience.

e. If a covered employer is forced out of business through foreclosure proceedings there will be no transfer of the employer’s experience unless the mortgagee takes over the operation of the business or enterprise and continues it to the same basic extent as though there had been no basic change in the ownership control.

This rule is intended to implement Iowa Code sections 96.7(3) “b,” 96.8 and 96.19(16) “b.”

871—23.29(96) Transfer of entire business.**23.29(1) Notice of acquisition.**

a. Whenever any employing unit in any manner succeeds to or acquires from an employer either the organization, trade or business or substantially all the assets thereof, and continues such organization, trade or business, such employing unit shall notify the department for the purpose of accomplishing the transfer of the reserve account of the predecessor employer to the successor employing unit. Such notification must be in writing, or on Form 60-0126, Report to Determine Liability, and include the name and address of the predecessor, the date of acquisition, and the name and address of the successor. When such notice has been received or in the absence of such notice when necessary information establishing that the acquisition occurred has been received by the department, the account, actual contribution and benefit experience, and taxable payrolls of the predecessor shall be transferred to the successor employing unit for determining its rate of contribution. Thereafter, benefits chargeable because of employment for such transferred organization, trade, or business shall be charged to the account of the successor. The predecessor must submit in writing a Form 60-0111, Employer Notice of Change, including the account number.

b. Where one or more employing units have been reorganized, merged or consolidated into a single employing unit and the successor employing unit continues to operate such merged or consolidated enterprise, the employing units involved shall file change of ownership Forms 60-0111, Employer Notice of Change, and 60-0126, Report to Determine Liability, with the workforce development department within 30 days from the date of the transaction. In addition to Forms 60-0111 and 60-0126, all entities involved in the merger shall file with the workforce development department the articles of merger, or if there are no articles of merger, a statement advising that the merger has transpired and that all employers involved in the merger are in agreement to the transaction.

(1) The predecessor business or businesses involved in the merger shall each file a final quarterly payroll report form as soon as possible after the merger has occurred but in no case later than 30 days after the close of the quarter in which the merger occurred.

(2) The successor entity shall indicate on Form 60-0126, Report to Determine Liability, whether or not the experience rates of all accounts are to be combined and the rate recomputed for the balance of the calendar year.

23.29(2) Contribution rate. The successor's contribution rate for the remainder of the calendar year beginning with the date of acquisition shall be assigned as follows:

a. If the successor had no account prior to the transfer and the successor purchased the business of only one predecessor, or more than one predecessor with identical rates, the rate assigned will be the rate of the predecessor employer or employers.

b. If the successor had no account prior to the transfer and purchased the business of more than one predecessor on the same day, the rate assigned will be a computed rate based on the combined experience of all the predecessor employers.

c. If the successor had an account prior to the transfer, the rate assigned will be the successor's existing rate. However, the successor may apply for a computed rate based on the combined experience of the predecessor or predecessors and the experience of the successor.

This rule is intended to implement Iowa Code section 96.7(2) "b."

871—23.30(96) Successorship—liability for contributions and payments in lieu of contributions.

23.30(1) Any employer who becomes a successor to an employer account shall be held liable for any unpaid contributions, reimbursable benefit payments, interest, penalties or costs which are owed to the department by the predecessor at the time of the transfer. An employer which is found to be a successor to a reimbursable account shall also be liable to reimburse the department for benefits paid after the date of acquisition that are based on wages paid by the reimbursable predecessor prior to the date of acquisition whether or not the successor has elected, or is eligible to elect, to become a reimbursable employer with respect to the successor's payroll.

23.30(2) Transfers under the Bulk Sales Act, uniform commercial code of Iowa, shall not be held by the department to be exempted from the provisions of Iowa Code section 96.7, and the transferee shall be held a successor to the employer account of the transferor and liable for any unpaid contributions, reimbursable benefit payments, interest, penalty, and costs owed to the department by the transferor notwithstanding any agreement between the two parties pursuant to the Bulk Sales Act.

This rule is intended to implement Iowa Code section 96.7.

871—23.31(96) Transfer of segregable portion of an enterprise or business.

23.31(1) *Application and required information.*

a. The experience of a distinct and segregable portion of an organization, trade, or business shall be transferred to an employing unit which has acquired such portion only if the successor employing unit:

- (1) Files with the department a written application, on Form 60-0126, Report to Determine Liability, or in letter form, within 60 days after the date of purchase;
- (2) Submits necessary information establishing the separate identity of the accounts within 30 days after request is made by the department unless the time is extended for good cause shown; and
- (3) Continues to operate the acquired portion of the business.

b. Necessary information establishing the separate identity of the account includes but is not limited to:

(1) Written agreement to the transfer by the predecessor. The predecessor's signature on Forms 68-0068 and 68-0065, parts A and B of the report of employer on transfer of one of two or more employing units, will be sufficient. (See 23.31(1)"b"(4), (5));

(2) Date of acquisition of the segregable portion;

(3) Date of commencement of the segregable portion by the predecessor;

(4) Report showing the names of employees, their social security numbers, and their wages attributable to the acquired portion of the business for the six calendar quarters including and immediately preceding the quarter in which the acquisition occurred. (Form 68-0065, part B of the report of employer on transfer of one of two or more employing units.)

(5) Report showing the predecessor and successor name, address, account numbers, information showing the total taxable wages and benefit charges to be transferred by quarter, for the 20 calendar quarters including and immediately preceding the date of the acquisition. (Form 68-0068, part A of the report of employer on transfer of one of two or more employing units.)

c. It shall be the sole responsibility of the successor employer to determine whether or not to apply for a partial transfer of experience. An application for a partial transfer may be withdrawn in writing at any time prior to the department mailing notice that the transfer has been approved.

d. It shall be the sole responsibility of the predecessor employer to determine whether or not to grant the partial transfer of experience. Permission to grant the partial transfer of experience may be withdrawn in writing at any time prior to the department mailing notice that the transfer has been approved.

23.31(2) *Portion of reserve and payroll transferred.* When the requirements for partial transfer as defined in subrule 23.31(1) have been met, the transfer shall be made in accordance with one of the following:

a. If the predecessor's account has been in existence less than five years prior to the acquisition or purchase date (or more than five years when records are available), the actual taxable wages contributions, benefit charges, interest earned, and wage records of individual employees (as supplied on Form 68-0065) attributable to the portion acquired shall be transferred; or,

b. If the predecessor's account has been in existence more than five years (and records prior to five years are unavailable) and the acquired portion has also been in existence more than five years,

(1) The actual taxable wages, contributions, benefit charges, and interest earned attributable to the acquired portion for the five-year period immediately preceding the date of acquisition shall be transferred, plus

(2) That portion of the predecessor's contributions, benefit charges, and interest earned for the period commencing with the beginning date of the predecessor's account and ending five years prior to the acquisition date equal to the ratio of the taxable wages attributable to the acquired portion for the 12 completed calendar quarters immediately preceding the acquisition date to the total taxable wages reported by the predecessor for the same 12-quarter period, and

(3) The individual wage records attributable to the acquired portion (as supplied on Form 68-0065); or,

c. If the predecessor's account has been in existence more than five years but the acquired portion came into existence within the last five years, the actual taxable wages, contributions, benefit charges, interest earned and individual wage records (as supplied on Form 68-0065) attributable to the acquired portion shall be transferred.

23.31(3) *Future benefit charges based on wages paid by the predecessor prior to the acquisition or purchase date.* The successor employer will receive future benefit charges based on the wage credits transferred to said successor's account for the six-quarter period immediately preceding the acquisition date plus any benefit charges based on wages attributable to the acquired portion prior to the six-quarter period on claims already filed on the date of the acquisition.

23.31(4) *Denial of transfer and appeals.*

a. Upon receipt of application (see subrule 23.31(1)) and accompanying information as required, the department shall issue a determination approving or denying the partial transfer. The determination approving a partial transfer will include notice to both parties as to their contribution rate for the current year.

b. If the department finds in any case that the acquisition of a business or a severable portion thereof was made solely or primarily for the purpose of obtaining a more favorable rate of contribution, the transfer of the reserve account shall not be approved. An acquisition shall be deemed to have been solely or primarily for such purpose if the department finds an absence of any reasonable business purpose for the acquisition other than a more favorable contribution rate.

c. Any determination made hereunder denying a partial transfer shall become conclusive and binding upon both the predecessor and successor unless one or both of them file an appeal. For the specific procedure and requirements for perfecting an appeal of an employer liability determination see rules 23.52(96) to 23.56(96).

23.31(5) *Liability of successor for contribution.* Any individual or organization, whether or not an employing unit, which in any manner acquires the organization, trade or business or substantially all of the assets thereof, and is held to be a successor, shall be liable for the payment of contribution, interest and penalty, due or accrued and unpaid by such predecessor employer, at the time of acquisition or purchase, if the department concludes that such contributions cannot be collected from the predecessor on the portion of such organization, trade or business acquired by the successor.

This rule is intended to implement Iowa Code section 96.7(3).

871—23.32 to 23.35 Reserved.

871—23.36(96) *Predecessor—contribution rates for winding down a business.* In the case where a predecessor has transferred its organization, trade, or business, or substantially all assets, to a successor in interest and the predecessor employer continues to operate a part of the business in order to wind down or close the business after the date of transfer, the predecessor shall be assigned a new account number and the rate of a newly covered employer for the purposes of reporting the wind down wages. For the purposes of this rule the term "wind down wages" shall not include wages earned before the sale or transfer that were paid after the sale or transfer.

This rule is intended to implement Iowa Code sections 96.8(1) and 96.8(4)"a."

871—23.37(96) Adjustments and refunds of contributions.

23.37(1) Contribution reports, when once submitted, shall not be returned to employers for correction. Whenever any employer discovers that the contribution report submitted is incorrect resulting in overpayment of contributions due and owing, such employer may file an application for credit allowance or refund. If the department discovers that the contribution report submitted by any employer is incorrect resulting in overpayment of contribution, it may on its own initiative refund or make a credit allowance. No refund or credit allowance will be made after three years from the date on which such overpayment was made. Such application shall be on a form prescribed by the department and furnished by the department which, among other things, shall show the correct amount of contributions claimed to be due for the period involved and the alleged overpayment or a letter of explanation signed by the employer will suffice. Adjustment shall be made by the department in the form of credit allowance or refund as provided in subrule 23.37(3) equal to that portion of contributions erroneously paid which exceeds the benefits paid to claimants as a direct result of the employer's erroneous report.

23.37(2) If the contribution and wage report first submitted by an employer understates the amount of wages paid for a given period, such employer shall file a supplemental report for such period and make remittance covering all additional contributions due and owing for such period on the unreported wages and interest.

a. If it is apparent, upon examination of any regular or supplemental contribution report that a greater contribution than is required by law has been paid, the department may, within three years from the date of such overpayment, make an adjustment and issue a credit adjustment memorandum for such overpayment.

b. If it is not apparent from the examination of any regular or supplemental contribution report that a contribution greater than that required by law has been made, any employer or employing unit claiming a credit adjustment shall file with the department a written application for such adjustment within three years from the date on which such overpayment was made. Such credit adjustment shall be granted only after a review of the application which shall set forth such information in the matter as may be required. If, after such review, the adjustment is found to be in order, the department shall issue a credit adjustment memorandum or refund for such overpayment.

23.37(3) Each credit adjustment memorandum issued shall be mailed to the employer entitled thereto at the last-known address. The employer may attach such memorandum to the contribution and wage report to the department for a future reporting period following receipt of such memorandum. The amount of the credit memo will be deducted from the contributions in the employer's account and credited to a credit memo outstanding account until such credit memo is used or canceled in accordance with these rules. Upon receipt by the department such credit memorandum will be applied against contributions due for the period covered by the contribution report to which such memorandum is attached and the account will be adjusted accordingly. In any case wherein the employer fails to utilize the credit memorandum issued to it as provided above, the department shall, three years from the date of issuance cancel said credit and redeposit the amount of the credit to the employer's reserve balance. If it is impracticable to apply any such credit adjustment memorandums against subsequent contributions, the department, upon request of the employer or employing unit or upon its own initiative, may issue an order directing refund covering such overpayment. The state comptroller upon receipt from the department of an order directing the refund, shall issue a warrant made payable in the amount and to the party named in such order.

23.37(4) When an employer requests a refund or credit of contributions paid due to an erroneous reporting of wages, such refund or credit shall be reduced by the amount of benefits paid and charged to the employer on account of such wages.

23.37(5) Requisites of claim for refund or credit. All grounds and facts alleged in support of a claim for refunds or credit shall be clearly set forth. The employing unit shall furnish such proof in support of the claim as may be reasonably necessary at the discretion of the department to support the validity and the amount of the claim and the fact that the employing unit making the application for refund or credit is legally entitled thereto.

871—23.38(96) Denial of claim for refund or credit. A claim shall be denied if an employing unit within 30 days after written demand by the department fails to submit reasonable proof to support the validity and amount of the claim or fails to request an extension of time in which to submit the required information.

871—23.39(96) Issuance of a duplicate credit memo.

23.39(1) Upon notification by an employer that a credit memo previously issued cannot be located, the department may send Form 68-0602, Duplicate Credit Memo Request, to be filled out and signed by the employer and returned to the department. In lieu of Form 68-0602, the department may, at its option, accept a written statement signed by the employer stating that the credit memo cannot be located and requesting a duplicate.

23.39(2) If an employer secures a duplicate credit memo and then locates the original the employer shall submit for cancellation the unused credit memo. If the employer uses both credit memos as payment on any contribution report(s) the employer shall be liable to the department for the amount of the duplicate credit memo so used.

871—23.40(96) Computation of rates for private sector employer.

23.40(1) Experience rating. For calendar year 1988 and subsequent years, an employer's experience rate shall be computed by dividing the average of all benefits charged to an employer during the five periods of four consecutive calendar quarters immediately preceding the computation date by the employer's five-year average annual taxable payroll to arrive at the benefit ratio. This ratio shall be applied to the appropriate rate table, as determined by the department, to determine the employer's contribution rate for the next calendar year.

23.40(2) Administrative contribution surcharge.

a. For calendar years 1988 through 1998, each employer except a governmental entity and a 501(c)(3) nonprofit organization will have an administrative contribution surcharge added to the contribution rate. The administrative contribution surcharge shall be a percentage, rounded to the next highest one-hundredth of 1 percent, of the taxable wage base in effect for the rate year following the computation date, which is equal to one-tenth of 1 percent of the Federal Unemployment Tax Act (FUTA) taxable wage base in effect on the computation date.

b. A portion of each payment received from an employer shall be considered administrative contribution surcharge and shall be credited to the administrative contribution surcharge fund. The administrative contribution surcharge shall be collectible, and interest shall accrue on unpaid surcharge at the same rate, as on regular contributions.

c. The portion of the employer's payment credited to the administrative contribution surcharge fund shall not be certified to the Internal Revenue Service as contributions for which the employer may take credit against the employer's federal unemployment tax (FUTA-Form 940).

d. The administrative contribution surcharge fund shall be a separate and distinct fund from the unemployment compensation fund. Interest earned on the moneys in the administrative contribution surcharge fund shall be credited to the administrative contribution surcharge fund. Moneys in the administrative contribution surcharge fund shall be appropriated by the general assembly. As a condition for the expenditure of \$200,000 from the fund to conduct labor availability surveys, all communities scheduled to be surveyed shall contribute a percentage of the cost of completing the community surveys as agreed to by the department and each community to be surveyed.

23.40(3) Temporary emergency surcharge beginning January 1, 1983. If it becomes necessary to implement a temporary emergency surcharge on all employers, except zero rated employers, governmental employers, and 501(c)(3) nonprofit organizations, for any quarter to pay interest on moneys borrowed from the federal government to pay unemployment insurance benefits, the emergency surcharge shall be collected and credited in the following manner:

a. The emergency surcharge rate shall be added to the employer's regular contribution (tax) rate for the quarter. The add-on rate shall be a uniform percentage of each affected employer's regular contribution rate rounded to the nearest one-hundredth of a percent. The affected employers will be notified by the department of the surcharge by any appropriate means available at the time.

b. A portion of each payment that is received from an employer for a quarter in which the emergency surcharge is in effect shall be considered as being temporary emergency surcharge and shall be credited to the temporary emergency surcharge fund.

c. The portion of the employer's payment credited to the temporary emergency surcharge fund shall not be certified to the Internal Revenue Service as contributions for which the employer may take credit against the employer's federal unemployment tax (FUTA-Form 940).

d. The temporary emergency surcharge shall be used to pay the interest accrued on the trust fund money advanced to the department of workforce development by the federal government.

e. The director of the department of workforce development shall prescribe the manner and the amount of the surcharge to be collected.

This rule is intended to implement Iowa Code sections 96.7(2), 96.7(11), 96.7(12) and 96.19(8) and 1994 Iowa Acts, chapter 1187.

871—23.41(96) Computation date defined. The computation date for the succeeding year's contribution rate shall be July 1. The rate computation shall include the wages reported for the quarter ending June 30 immediately preceding the computation date, benefit charges based on benefit warrants issued on or before June 30 immediately preceding the computation date, and contributions paid by September 30 immediately following the computation date.

This rule is intended to implement Iowa Code section 96.19(8).

871—23.42(96) Crediting of interest earned on the unemployment trust fund. Interest received on moneys deposited with the Secretary of the Treasury of the United States shall be credited to the unemployment compensation fund.

This rule is intended to implement Iowa Code section 96.9(2) "c."

871—23.43(96) Charging of benefits to employer accounts.

23.43(1) How charged. Benefits paid to an eligible claimant shall be charged against the base period wage credits in the same inverse chronological order as the wages on which such wage credits are based were paid to the claimant.

23.43(2) Formula for charging employer accounts.

a. Wage credits in the most recent quarter of the base period will be used first and when wage credits in this quarter are exhausted, wage credits for the next most recent quarter will be used until each of the four quarters in the base period is exhausted or until the claimant is paid an amount not to exceed the claimant's maximum benefit amount.

b. Each employer who has wage credits in the quarter of the base period currently being used will be charged the employer's proportional share of each payment. The proportional share to be charged to each employer in the quarter will be the employer's percentage of the total wage credits in the quarter.

23.43(3) Rule of two affirmances.

a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.

b. However, if the decision is subsequently reversed by higher authority:

(1) The protesting employer involved shall have all charges removed for all payments made on such claim.

(2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.

(3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

23.43(4) *Supplemental employment.*

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges. On a second benefit year claim where the individual worked only for the part-time employer during the base period and the lag quarter, the part-time employer shall not be considered for relief of benefit charges with the onset of the second benefit year. It is the part-time employer's responsibility to notify the department of the part-time employment situation so the department may render a decision as to the availability of the individual and benefit charges. The individual is required to report gross wages earned in the part-time employment for each week claimed and the wages shall be deducted from any benefits paid in accordance with Iowa Code section 96.3(3).

b. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting without good cause the part-time employer. The individual and the part-time employer which was voluntarily quit without good cause shall be notified on the Form 65-5323 or 60-0186, Decision of the Job Service Representative, that benefit payments shall not be made which are based on the wages paid by the part-time employer, and benefit charges shall not be assessed against the part-time employer's account; however, once the individual meets the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be restored for benefit payment and charging purposes as determined by applicable requalification requirements.

23.43(5) *Sole purpose.* The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

23.43(6) *Reserved.*

23.43(7) *Department-approved training.* A claimant who qualifies and is approved for department-approved training (see rule 871—24.39(96)) shall continue to be eligible for benefit payments. No contributing employer shall be charged for benefits which are paid to the claimant during the period of the department-approved training. The relief from charges does not apply to the reimbursable employer who is required by law or election to reimburse the trust fund, and such employer shall be charged with the benefits paid.

23.43(8) *Ten times the weekly benefit amount in insured work requalification.*

a. In order to meet the ten times the weekly benefit amount in insured work requalification provision, the following criteria must be met:

Subsequent to leaving or refusing work, the individual shall have worked in (except in back pay awards) and been paid wages equal to ten times the claimant's weekly benefit amount.

b. An employer's account shall not be charged with benefit payments to an eligible claimant who quit such employment without good cause attributable to the employer or who was discharged for misconduct or who failed without good cause either to apply for available, suitable work or to accept suitable work with that employer but shall be charged to the balancing account.

c. The requalification and transfer of charges shall occur for the employer if the requalifying employment is earned with an out-of-state covered employer. The transfer of charges shall be made to the balancing account.

d. Periods of insured employment with separate employers may be joined to collectively equal ten times the individual's weekly benefit amount when requalification cannot be accomplished by an individual insured employer. The employer from whom the individual left work, was discharged or with whom the individual failed to apply or accept suitable work, will not accrue any charges.

e. Before benefits can be paid or the transfer of charges can occur, sufficient evidence must be present to establish the fact that the criteria in subrule 23.43(8), paragraph "a," has been met. Verification of employment may be completed through the records of the department or by using any method establishing proof of the necessary wage credits, including the following:

(1) An employment verification form, 60-0227, is an affidavit prepared in duplicate stating: the insured employer's name, mailing address, the starting date of employment, and wages paid subsequent to that date. The form must be signed by the claimant alleging that the facts are correct. Any misrepresentation in the form may result in overpayment, fraud charges and administrative penalty any or all thereof. A copy of the form must be mailed to the employer or employers for verification. The employer should review the information on the form and certify that it is either correct or in error. If the information is incorrect, the employer should give the proper information. If the employer fails to return the form within five days of date mailed, the information on the form will be presumed to be correct.

(2) Employment check stubs may be used in conjunction with the employment verification form, 60-0227, to indicate the requalifying period.

23.43(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20, will be liable for charges for benefits paid by the out-of-state paying state, but no reimbursement so payable shall be charged against a contributory employer's account for the purpose of section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and that such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

b. The Iowa employer whose wage credits have been transferred and who has potential liability will be notified on Form 65-5522, Notice of Wage Transfer, that the wages have been transferred, the state to which they have been transferred, and the mailing address to which a protest of potential charges may be mailed. This protest must be postmarked or received by the department within ten days of the date the Form 65-5522 was mailed to be considered as a timely protest of charges. If the protest from either the reimbursable or contributory employer justifies relief of charges, charges shall go to the balancing account.

c. Requests received from the paying state for amounts in excess of an amount equal to potential charges of an Iowa claim will not be charged to the Iowa employer, except for reimbursable employers.

d. When Iowa is the paying state on an interstate claim wherein Iowa wage credits are insufficient to have a valid Iowa claim, charges shall not be made against the Iowa employer's account but shall be charged to the balancing account, except for reimbursable employers.

23.43(10) Reserved.

23.43(11) Extended benefits.

a. Fifty percent of the amount of each week of extended benefits paid to an individual in accordance with rule 871—24.46(96) shall be charged against the account of the employer which is chargeable for the extended benefits; however, 100 percent of the amount of each week of extended benefits paid to an individual shall be charged against the account of the governmental contributory or reimbursable employer which is chargeable for the extended benefits.

b. The lack of a one-week waiting period prohibits this state from receiving a payment from the U.S. Department of Labor for 50 percent of the amount of the first week of extended benefits paid to an individual. This amount shall not be charged against the account of the employer which is chargeable for the extended benefits unless the employer is a nonprofit reimbursable employer but shall be charged against the balancing account.

c. In the event that a payment from the U.S. Department of Labor for 50 percent of any week of extended benefits paid to an individual is reduced under an order issued under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the amount of the reduction shall not be charged against the account of the employer which is chargeable for the extended benefits unless the employer is a nonprofit reimbursable employer but shall be charged against the balancing account.

23.43(12) *Charging of benefits paid to individuals employed by two or more employers.*

a. Whenever wage reports submitted to the department show the employment of an individual by more than one employer in the same calendar quarter, benefits shall be charged to each employer's account in the same proportion as wages paid in the quarter.

b. Benefits for partial unemployment shall be charged in the same manner as benefits for total unemployment, except that no charges shall be made against the account of the base period contributory or reimbursable employer which continues to employ the individual on the same basis that the employer employed the individual during the individual's base period.

23.43(13) *Government contributory charges.* For the purpose of determining the base rate for government contributory employers, a percentage of all benefits that are paid but are not chargeable to employer accounts because of various provisions of the law, will be considered as belonging to government contributory employers. The percentage of the nonchargeable benefits considered to be attributable to government contributory employers for each calendar year will be determined by the ratio of the benefits actually charged to government contributory accounts for the year to the total benefits charged to all contributory accounts for the year.

23.43(14) *Removal of benefit charges upon the sale or transfer of a clearly segregable part of an employer's business or enterprise when the acquiring employer does not receive a partial transfer of experience.* Benefits based on wages earned with the transferring employer, paid to an individual who worked in and was paid wages for work with the acquiring employer shall be transferred to the balancing account. The transferring employer must protest this issue on the Notice of Claim, Form 65-5317, in a timely manner to receive relief from the charges. The relief of charges shall apply to both contributory and reimbursable employers.

This rule is intended to implement Iowa Code sections 96.3(7), 96.5(1), 96.6(2), 96.7, 96.8(5), 96.9(5), 96.11(1), 96.16(4), and 96.29.

871—23.44(96) Benefits payments.

23.44(1) Overpayments. If a claimant is overpaid benefits, the employer will be relieved of benefit charges to such employer's account.

23.44(2) The employer shall not be relieved of benefit charges for a payment of back pay until the amount of the overpayment is recovered by the department.

23.44(3) Option of reimbursable credit or refund for an overpayment. The department shall credit the account of the reimbursable employer for overpayments. However, the employer may request a refund in those cases where the employer determines that it cannot use the credit against future charges within a reasonable period of time.

This rule is intended to implement Iowa Code sections 96.7(3), 96.11(1) and 96.20(2), as interpreted in the recent Iowa Supreme Court case, *Robert A. Galvin, et al., vs. Iowa Beef Processors, Inc., et al.*, filed January 8, 1978.

871—23.45 Reserved.

871—23.46(96) Termination of coverage.

23.46(1) Once an employing unit is determined liable, whenever because of its own employment experience, by voluntary election, through succession or because of liability under the Federal Unemployment Tax Act, it remains liable thereafter until liability is officially terminated by the department.

23.46(2) To end liability, an employer must file an application for termination of coverage with the department. This application must be filed by February 15 of the year for which the employer seeks to terminate liability, and it must show that employment experience in the preceding year was such as to make the employer eligible to terminate liability; that is, it must show that in the preceding calendar year the employer did not have one or more persons in employment within 20 or more calendar weeks, and that there was no calendar quarter in that year in which the gross payroll equaled or exceeded \$1,500. This does not apply to coverage for agricultural, domestics or political subdivisions.

23.46(3) If the account was established as an affiliated account with another employing unit it cannot be terminated unless the other account is terminated also.

This rule is intended to implement Iowa Code section 96.8(2).

871—23.47(96) Termination of accounts because of no wage reports.

23.47(1) If, at any time, the department finds by employer liability investigation or otherwise that an employer has paid no wages for any four consecutive quarters, the department may on its own motion or by employer request place the account in a pending status. The term “pending” refers to an account that is placed in an inactive status pending termination as provided in Iowa Code section 96.8(4) “b.” Upon determination of pending status the department shall notify the employer on Form 65-5308, Notice of Employer Status and Liability, that the employer’s account has been placed in an inactive status and that the employer shall no longer receive a quarterly reporting Form 65-5300. However, the employer must notify the department if, at any time, the employer resumes paying Iowa wages.

23.47(2) If, at any time prior to termination, a pending account is found to have paid wages in any quarter, the employer account shall be reactivated, reports secured for all quarters in which the account was in pending, including no wage reports for quarters for which there was no employment, and the account shall receive an experience rating; provided, the account has been in existence long enough to qualify for an experience rating.

23.47(3) If, on the computation date, the department finds that an employer eligible for an experience rating has not paid wages during the eight consecutive calendar quarters immediately preceding the computation date, the employer’s account shall be terminated effective the January 1 following the computation date, and the employer shall be so notified on Form 65-5306, Notice of Contribution Rate. However, if the employer pays wages after the computation date and prior to the following January 1, the employer’s account shall not be terminated, and the employer will receive an experience rating.

This rule is intended to implement Iowa Code sections 96.7(3) “d” and 96.8(4) “b.”

871—23.48(96) Previously covered employers. If a contributory employer’s account has been terminated for any reason (including an employer who has terminated an election to be contributory and has elected to be reimbursable), and such employer is again determined liable or again elects to be contributory, the employer shall be treated the same as a newly covered employer.

This rule is intended to implement Iowa Code sections 96.7 and 96.8.

871—23.49 and 23.50 Reserved.

871—23.51(96) Payments in lieu of contributions.

23.51(1) That each nonprofit organization which has been approved to make payments in lieu of contributions shall be billed each quarter for benefits paid during such quarter.

23.51(2) The money payments to the unemployment fund which are required by Iowa Code section 96.7 for those employers who elect to reimburse the department shall be in an amount equal to the regular benefits and one-half of the extended benefits paid, and charged to such employer's account. Government reimbursable employers will be charged all of the extended benefits paid.

This rule is intended to implement Iowa Code section 96.8(5).

871—23.52(96) Employer liability appeal.

23.52(1) An initial employer liability determination including employer status and liability, assessments, rate of contributions, successorships, worker's status, and all questions regarding coverage of a worker or group of workers may be appealed to the department of workforce development for a hearing before an administrative law judge.

23.52(2) The appeal shall be in writing stating:

- a. The name, address and Iowa employer account number of the employer.
- b. The name and official position of the person filing the appeal.
- c. The decision which is being appealed.
- d. The grounds for the appeal and the relief sought.

23.52(3) The appeal shall be addressed to: Department of Workforce Development, Tax Section, 1000 East Grand Avenue, Des Moines, Iowa 50319. The employer shall provide adequate postage.

23.52(4) Unless otherwise required, all determinations by the tax section will be sent by regular mail to the last-known address of the employer. The determination will be dated and the employer or other interested party shall have 30 days from the mailing date printed on the notice to appeal the determination. The employer has 15 days to appeal a notice of reimbursable benefit charges, Form 65-5324.

23.52(5) If the department concludes, upon reviewing an appeal, that the original determination is correct, the tax section may write to the employer and further explain the decision. If the employer still desires a hearing before a representative of the department, the employer should notify the department within 30 days of the date of the letter from the department.

23.52(6) Upon receipt of a request for hearing, the tax section will ask the appeals bureau to schedule a hearing for the employer. A copy of the request will be mailed to the employer. A copy of the file containing all relevant information regarding the issue of the appeal shall be forwarded to the appeals bureau. Documents that may be sent to the appeals bureau include a copy of the disputed decision, the employer's original letter of appeal, all relevant correspondence from the department, and the employer's letter requesting a hearing. All employer liability appeals shall be heard by an administrative law judge of the department and shall be scheduled for hearing at the earliest possible date. Procedures for employer liability hearings are set out in rule 871—26.7(96).

23.52(7) In those cases in which the department finds that a genuine controversy exists or has existed regarding an employing unit's liability for contributions on all or a part of its employees or, a rate appeal or other employer liability question and the case has been resolved against such employing unit, then no interest or penalty will accrue from the date of such controversy between the department and the employing unit until 30 days after the decision becomes final.

871—23.53(96) Rate appeal and eligibility decision reversal.

23.53(1) An employer who appeals a rate notice or corrected rate notice within 30 days following the procedures outlined in rule 23.52(96) may have its rate recomputed based upon the reversal of a benefit eligibility decision under the following circumstances:

- a. An employer may appeal on the grounds that benefit charges against the employer's account have been reversed by a decision issued subsequent to the rate computation date. The department will investigate and remove benefit charges, which have been reversed by a subsequent decision, from the computation and will issue a corrected rate notice to the employer.

b. The employer may appeal on the grounds that benefits charged against the employer's account may be reversed by a decision to be issued on a pending claim or charge-back appeal. The employer's rate will not be recomputed. However, the rate will not become final and the appeal may be reopened by the employer, in writing upon receipt of a decision reversing the allowance of benefits or relieving the employer of charges provided that the request to reopen the appeal is submitted within 30 days of the date of the next rate notice following the date of the decision. The charges will be removed from the computation of the original rate and a corrected rate notice will be issued. The employer must pay any contributions that become due at the disputed rate prior to the receipt of the decision reversing the benefit charges; however, a refund of any overpayment of contributions and interest paid by the employer as a result of the recomputation of the rate will be issued, subject to the three-year statute of limitations set out in Iowa Code section 96.14(5).

c. The employer's payment of contributions at the disputed rate in the circumstances described in 23.53(1) "b" will not be an acquiescence of the disputed rate.

d. The employer, in the circumstances described in 23.53(1) "b," must file a separate appeal of each rate notice received that contains the disputed benefit charges. If the employer does not file a timely appeal of each affected rate notice, any appeal filed following receipt of a decision reversing the allowance of benefits will be considered as applying only to rate notices that were timely appealed and to the next rate notice.

e. If the employer appeals on the grounds that the benefits charged against the employer's account were paid to an employee who was still working for the employer in the same employment as in the base period of the claim, the department will remove the charges and will issue a corrected rate notice. However, the employer's appeal must have been made within 30 days of the date on the first rate notice received that included any of the disputed charges. Provided further that the issue of charging of benefits had not been previously adjudicated in either an appeal of the original claim notice or an appeal of a quarterly benefit charge statement.

23.53(2) Reserved.

871—23.54(96) Payment of disputed assessments.

23.54(1) Payment of a disputed assessment is held to be an acquiescence in the assessment and it waives any further right of appeal. It is immaterial whether the assessment is paid before, at the time of, or after the taking of the appeal.

23.54(2) An employing unit which has appealed a determination of liability, or a payment of contributions due, shall file Form 65-5300, Employer's Contribution and Payroll Report, for all quarters for which the employer is held liable. Such reports are to be marked by the employer filed under protest and submitted without payment.

23.54(3) The department may waive acquiescence and allow payment of the disputed tax. The department may in its discretion waive acquiescence for good cause. The employer should make application for the waiver by letter directed to the supervisor of the tax section.

871—23.55(96) Burden of proof.

23.55(1) The burden of proof in all employer liability cases shall rest with the employer.

23.55(2) The burden of proof shall rest with an employing unit which employs any individual during any calendar year but which considers itself not an employer subject to the Act, to establish that it is not an employer subject to the Act by presenting proper records, including a record of the identity of the employees, number of individuals employed during each week, and the particular days of each week on which services have been performed, and the amount of wages paid to each employee.

871—23.56(96) Informal settlement.

23.56(1) Pursuant to Iowa Code chapter 17A a controversy may, unless precluded by statute, at the discretion of the department be informally settled by mutual agreement of the department of workforce development and the person or employer who is or is about to be engaged in the controversy with the department. The settlement shall be effected by a written statement reciting the subject of the controversy and the proposed solution mutually agreed upon by the parties including a statement of the action to be taken, or to be refrained from, by each of the parties. The informal settlement shall constitute a waiver, by all parties, of the formalities to which they are entitled under the terms of Iowa Code chapter 17A, with respect to the specific fact situation which is the subject of the controversy.

Either party may initiate a proposal for informal settlement of the controversy by communicating a proposal to the other party before the contested hearing is convened.

23.56(2) If the parties agree to a settlement, the written statement shall be presented to the chief of the division of unemployment insurance for review and approval.

23.56(3) In the event a settlement is reached in a case which has been appealed to the courts, then the formal settlement will be presented to the appropriate district court. If an assessment of contributions or a decision upon which an assessment is based has become final without appeal, then the actual established contribution may be compromised by agreement of the parties and submission to the district court pursuant to Iowa Code section 96.14(5). Doubtful collectibility as contained in section 96.14(5) includes tax debts which are doubtful as to validity or as to collectibility. The department is not required to enter into any informal settlement or compromise with regard to any employer liability determination and may or may not do so at its own discretion.

871—23.57(96) Interest and penalty on contributions paid with adjustments submitted by employer.

23.57(1) If an employer, on its own motion, submits an adjustment for an error made on a previous report and pays any additional contributions due on the adjustment when the employer submits the adjustment, no interest on the additional contributions will be charged if it is shown to the satisfaction of the department that the error on the original report and subsequent late payment of the contribution due on the adjustment was not the result of negligence, fraud, intentional disregard of the law or rules of the department.

23.57(2) If an employer submits an adjustment without payment, and payment is due, such employer will be assessed for the additional contributions plus interest as provided by law.

871—23.58(96) Assessment of unpaid contributions, interest and penalty. After the submission of a report upon which a contribution, interest or penalty is due and not paid, the department shall notify the employer or the employer's agent by telephone or by letter, or by Form 65-5330, Debit Memo of the Deficiency. Form 65-5331, Employer Contribution Monthly Statement, will be mailed each month. If payment is not received within ten days of such notification, 68-0043, Notice of Assessment and Lien, may be mailed by certified mail to the employer at the address of record in the department files. Such notice shall be an assessment against the employer for the amount of contributions, interest, and penalty for the period(s) shown on said assessment. If the department determines that collection would be in jeopardy by any delay, Form 68-0138, Jeopardy Assessment, shall be given to the employer in person or by certified mail.

This rule is intended to implement Iowa Code sections 96.7, 96.14(2), and 96.14(3).

871—23.59(96) Determination and assessment of contributions.

23.59(1) If the department finds from the examination of the employer's reports or account that the contributions have been underpaid because of a department error in assigning the contribution rate, the additional contributions shall be paid within 30 days after the department notifies the employer; however, no interest or penalty will accrue until 30 days after the notification.

23.59(2) Assessment—failure to make return.

a. If any employing unit fails to make a return as required the department shall make an estimate based upon any information in its possession or that may come into its possession of the amount of wages paid for employment in the period or periods for which no return was filed upon the basis of such estimates shall compute and assess the amounts of employer contributions payable by the employing unit together with interest and penalty.

b. Whenever the department determines that the collection of contributions from an employer is in jeopardy and the employer has failed to file the necessary reports of wages paid for the quarter for which such contributions are due and payable or have been declared due and payable prior to the reporting date set out in rule 23.8(96), the department shall prepare estimated reports.

c. Such estimates may be made by authorized personnel in the tax section and shall be referred to the collection unit where Form 68-0138, Notice of Jeopardy Assessment, shall be prepared.

This rule is intended to implement Iowa Code section 96.7.

871—23.60(96) Accrual of interest and penalties.

23.60(1) An employer who fails to file or make sufficient a report of wages paid to each of its employees for any period in the time and manner set forth in Iowa Code section 96.7 and rule 871—22.3(96) shall pay to the department a penalty in accordance with Iowa Code section 96.14(2).

23.60(2) The amount of the penalty for a delinquent or insufficient report shall be based on the total wages paid by the employer in the period for which the report was due, except that the penalty shall not be less than \$10 for the first delinquent report or the first insufficient report not made sufficient within 30 days of a request to do so. The penalty shall not be less than \$25 for the second delinquent or insufficient report, and not less than \$50 for each subsequent delinquent or insufficient report, until four consecutive calendar quarters of reports are timely and sufficiently filed.

23.60(3) Interest and penalty shall not accrue with respect to contributions required from an employer based upon wages for employment in those cases in which the employer's liability is based solely upon the provisions of Iowa Code section 96.19(16) "g" until 30 days after determination of such liability under the federal Unemployment Tax Act.

23.60(4) Interest and penalty shall not accrue in those cases where the department finds that, as a matter of equity and good conscience, the employer should not be required to pay interest.

23.60(5) Interest as provided under Iowa Code section 96.14 shall accrue 30 days after the quarterly billing to reimbursable employers.

23.60(6) The penalties applicable to contributory employers shall be applicable to employers who have been approved to make payments in lieu of contributions.

23.60(7) Payment checks not honored by bank. An employer is liable for interest for a check in payment of contributions which is not honored by the bank upon which it is drawn.

This rule is intended to implement Iowa Code section 96.14(2).

871—23.61(96) Collection of interest and penalties. The collection of penalties and interest where no contributions are due from the employer shall be done in the same manner as when contributions are due.

871—23.62(96) Rescission of interest and penalty.

23.62(1) Interest and penalty charges may be rescinded whenever an employer can provide documentary evidence to the satisfaction of the department that an inquiry in writing was directed to the department at least 15 days prior to the delinquency date for the report(s) or contribution(s) untimely filed or paid, and such contributions are paid in full.

23.62(2) Penalty charges only may be rescinded whenever the employer can show documentary evidence that the wages paid to employees used to determine liability to the department were reported to another state in good faith and the contributions thereon were properly paid to the state to which such wages were reported and that said employees were fully insured during the period of unreported liability to this department.

871—23.63(96) Cancellation of interest and penalty. The department may, at its discretion and for good cause, cancel interest and penalty upon written, sworn request for the waiver from the employer or an agent for the employer. Requests should be directed to the department at its administrative office. The employer will be advised by decision of the disposition of the request.

In determining whether good cause has been shown, the department shall consider all relevant factors including but not limited to whether the party acted in the manner that a reasonably prudent individual would have acted under the same or similar circumstances, whether the party received timely notice of the need to act, whether there was administrative error by the department, whether there were factors outside the control of the party which prevented a timely action, the efforts made by the party to seek an extension of time by promptly notifying the department, the party's physical inability to take timely action, the length of time the action was untimely, and whether any other interested party has been prejudiced by the untimely action.

This rule is intended to implement Iowa Code section 96.14(2).

871—23.64(96) Refund of interest and penalty.

23.64(1) Interest or penalty may be refunded only when it has been erroneously paid or overpaid. Interest or penalty erroneously collected in excess of the amount due may be credited or refunded to the employing unit or other person(s) who paid such interest or penalty subject to the following limitations.

a. If the department determines that a claim for refund or credit is allowable in accordance with the Iowa Code and these rules, it shall so find and make an adjustment as follows:

b. The amount of the overpayment shall first be applied against any unpaid liability then due from or accrued against the employing unit. The remainder of such portion of the overpayment shall be refunded to the employing unit or other person(s) by whom it was paid, or its or their successor, administrators or executors.

23.64(2) Reserved.

871—23.65(96) Liens for unpaid contributions, interest, and penalties.

23.65(1) Filing of liens and notice of jeopardy assessments.

a. If reports are filed by an employer for the purpose of determining the amount of contribution due, or an assessment of contribution due, and the employer fails to pay any part of the contributions, interest and penalties due as determined by the report or assessment, Form 68-0043, Notice of Assessment and Lien, will be sent to the employer.

b. If, 30 days after a Notice of Assessment and Lien, or a Notice of Jeopardy Assessment has been served (see subrule 23.59(2)) and the employer has failed to make payment in full of the amounts that were assessed, the department may file a lien with the county recorder of the county in which the employer has its principal place of business, or with the county recorder of any county in which the employer has real or personal property.

c. Such lien, known as a Form 68-0024, Notice of Lien, shall state the date of assessment, the employer's name, address and account number, and the amount due. The recorder shall record the Notice of Lien as provided in Iowa Code section 96.14(3).

23.65(2) When the Notice of Lien is duly filed and recorded, the amount therein stated shall be a lien upon the entire interest of the employer, legal or equitable, in any real property, and upon any personal property, tangible or intangible, located in any county where the Notice of Lien or copy thereof is filed.

23.65(3) As provided in Iowa Code section 96.14(3), the lien shall attach as of the date the assessment is mailed or personally served upon the employer.

23.65(4) The transfer, through sale, exchange, or other method, of a major portion of the assets of a delinquent employer shall not defeat or impair the lien in favor of the department, and the person acquiring such assets shall be held liable for payment of all delinquent contributions, interest, and penalties due from the delinquent employer. The department shall be made a party to any foreclosure action involving any real or personal property against which the department has or may claim a lien.

23.65(5) Liens against out-of-state employers and resident employers who remove themselves from the state of Iowa may be obtained in accordance with section 96.14(6).

23.65(6) The department may, at its discretion and in accordance with Iowa Code section 96.14(3), make an assessment and file a lien in the recorder's office in the county or state where the employer resides. Liens shall be recorded in accordance with the law governing such liens in the state where filed and the costs shall be borne by the employer.

23.65(7) No employment security lien(s) shall be released without payment of the contributions and costs secured thereby except as follows:

a. It is shown to the department's satisfaction that the lien(s) was filed in error. If this is shown, the lien shall be at the expense of the department.

b. Release of the lien(s) is ordered by a judge having jurisdiction over same.

c. A release is necessary to facilitate payment to the department from proceeds of sale in an equity action.

d. A foreclosure action has been initiated by a secured creditor and it is demonstrated to the department's satisfaction all of the following:

(1) The lien of the secured creditor is properly perfected and is senior to the employment security lien.

(2) The property, both real and personal, does not exceed in value the amount of the secured lien on which the foreclosure is taken.

23.65(8) In such cases, the department may release its lien(s) but such release shall be only in respect to the property foreclosed upon by the secured creditor.

23.65(9) Interest and penalty secured by a lien may be compromised by the department at its discretion.

23.65(10) Upon payment of contributions, interest, penalty, and costs, the department shall execute a Form 68-0199, Satisfaction of Lien, by filing it with the recorder's office for the county where the lien was filed. A copy of this satisfaction shall be mailed to the employer.

This rule is intended to implement Iowa Code section 96.14(3).

871—23.66(96) Jeopardy assessments.

23.66(1) If the department believes the collection of any contribution will be jeopardized by delay, the department may, whether or not the time otherwise prescribed by rule 23.8(96) for making return and paying any contribution has expired, immediately assess the contributions, together with all interest and penalty. The contributions, penalty and interest shall become immediately due and payable. The jeopardy assessment shall be made by personal service upon the employer or the employer's agent by a representative of the department or civil officer of the state. Should immediate personal service not be possible, the jeopardy assessment shall be sent by certified mail to the employer's address of record and such mailing shall be a satisfactory service.

23.66(2) If, after a jeopardy assessment has been served, the amount assessed remains unpaid and no appeal has been filed by the employer, a notice of lien shall be recorded in the recorder's office for the county or counties in which the employer resides or owns property. A copy of the lien shall be mailed to the employer at the address of record.

23.66(3) If, at the time of service of a jeopardy assessment, the employer protests or disputes the correctness of the assessment, the employer may furnish to the department and the department may accept a bond in an amount the department deems necessary but not to exceed double the amount of contributions due, provided the department is satisfied as to the security of the bond. So long as the bond remains in force and the assessment remains in dispute, the department shall not issue a distress warrant. If, after final adjudication of the jeopardy assessment, the employer fails to pay the assessed amount in full, the bond shall be forfeited to the extent necessary to satisfy the jeopardy assessment plus any accrued interest. Any overage shall be refunded to the employer by warrant or credit. If the bond is insufficient to pay the jeopardy assessment in full, the department may issue a distress warrant as provided in rule 23.67(96).

23.66(4) After a lien has been filed and the amount or any portion of the amount assessed and any additional accrued interest remains unpaid, the department may at any time issue a distress warrant instructing a sheriff or peace officer to levy upon and seize or attach any real or personal property of the employer in satisfaction of the amount assessed and secured by the lien.

This rule is intended to implement Iowa Code section 96.7(7).

871—23.67(96) Distress warrants.

23.67(1) In addition to and as an alternative to any other remedy provided by the Iowa Code and these rules, the department may proceed to enforce its lien by issuing to the sheriff of any county or to any civil officer of the state of Iowa having proper jurisdiction a distress warrant commanding said sheriff or civil officer to levy upon and sell any real or personal property which may be found within its jurisdiction belonging to an employer who has defaulted in the payment of any sum determined by the department to be due from such employer, and to pay the proceeds of such sale over to the clerk of district court in and for the county in which such property is found. All costs of such execution shall be charged to the employer.

23.67(2) Such sale shall be held after the property has been levied upon, the period of redemption has expired, and the department has petitioned for and been granted a condemnation order in the district court in and for the county in which such property was levied upon, in accordance with the Iowa Code and the rules of civil procedure.

23.67(3) No property belonging to said employer shall be exempt from execution.

23.67(4) Whenever a warrant is returned not satisfied in full, the department may proceed to issue a new warrant in the amount remaining unsatisfied, together with any additional interest, penalties, and costs, as provided above.

871—23.68 Reserved.

871—23.69(96) Injunction for nonpayment or failure to report.

23.69(1) In addition or as an alternative to any other remedy provided in Iowa Code chapter 96 and this rule, the department may proceed to enjoin an employer who has refused or failed to pay any contributions, interest, or penalty or who has failed to file any reports required by the department.

23.69(2) Discretion as to whether or not to seek an injunction rests with the department.

23.69(3) When the department determines that an injunction should be obtained, the department will send by certified mail or by personal service to the employer at the last-known address for the employer a notice which shall provide the following information:

- a. That the department plans to seek an injunction against the employer.
- b. The period(s) for which there are delinquent contributions, interest, and penalty due or for which returns have not been filed.
- c. The amount of indebtedness.
- d. That the injunction will enjoin the employer from operating any businesses in the state of Iowa until one of the following conditions is met:
 - (1) The entire indebtedness is paid.
 - (2) The employer files a full and sufficient bond.

(3) The employer has entered into a court-approved plan providing for payment of the indebtedness.

e. That the employer has ten days in which to respond to the department.

23.69(4) Upon expiration of the ten days following the notice, if the employer has not responded satisfactorily, the department shall file with the district court for the county in which the employer resides a petition requesting a hearing and an order granting the injunction.

23.69(5) Upon the issuance of a court order granting the injunction, the department shall proceed to periodically check to ensure that the employer is complying with the injunction order. Should the department find that the employer is not in compliance, it will ask the court for a finding of contempt and will ask the court to impose appropriate punishment.

23.69(6) Upon payment in full of the delinquent contributions, interest, and penalty, and the filing of all delinquent reports, the department shall have the injunction dissolved.

23.69(7) If the employer, as the result of a court-approved payment plan, is relieved by the court of the injunction and the employer fails to perform strictly as set out in the plan, the department may, at its discretion, ask the court to reinstate the injunction upon notice and hearing.

23.69(8) Any costs of these actions shall be borne by the employer.

871—23.70(96) Nonprofit organizations.

23.70(1) Any nonprofit organization can be considered eligible to reimburse the Iowa unemployment compensation fund in lieu of paying contributions. Any nonprofit organization wishing to be considered as a reimbursable employer shall file as provided under Iowa Code section 96.7. The election to reimburse the fund shall be filed in duplicate on Form 68-0463, Election to Make Payments in Lieu of Contributions, with the department for its consideration.

23.70(2) Election to Make Payments in Lieu of Contributions, Form 68-0463, must be signed by an authorized official of the nonprofit organization and shall be accompanied by:

a. A letter of intent indicating the organization's desire to be considered for reimbursable status.

b. A copy of the organization's letter of 501(c)(3) exemption from the Internal Revenue Service. If the organization does not have a 501(c)(3) letter at the time of the filing of its election to become a reimbursable employer, it may file a written request with the department for an extension of time setting forth the reason for the request, and the department may grant such extension not to exceed 180 days. Included with this request for extension of time should be a copy of the application for exemption, Election to Make Payments in Lieu of Contributions, or evidence that the request for 501(c)(3) exemption has been made.

c. A corporate charter or other documents that brought the organization into being.

23.70(3) All requests by nonprofit organizations wishing to be considered for reimbursable status shall be filed on Form 68-0463 and that form, along with the organization's 501(c)(3) Internal Revenue Service letter of exemption, except as otherwise provided in subrule 23.70(2), shall be directed to the attention of the field audit unit. The request for reimbursable status will be examined by a field auditor or other authorized representative and subsequently forwarded to the supervisor of the tax section for a review of bond or other security approval before final submission of all forms to the department of approval.

23.70(4) All nonprofit organizations requesting reimbursable status shall either post a surety bond, moneys or securities. Those organizations requesting a surety bond shall forward to the department total taxable wages paid for covered employment in the four calendar quarters immediately preceding the effective date of the election for reimbursable status. This information shall be recorded on Form 68-0463 under the heading bond or deposit information.

23.70(5) In the event this quarterly taxable wages information is not available, the requesting organization will submit estimated quarterly total taxable wage information based on current calendar year wage data or estimates from that data. Subsequently, this information shall be examined by the supervisor of the tax section or the supervisor's representative and a surety bond figure shall be approved. Those organizations not wishing to post a surety bond but wishing to deposit moneys or securities in accordance with Iowa Code section 96.7 shall submit their proposal in writing to the supervisor of the tax section for examination and final approval.

23.70(6) An organization not possessing a 501(c)(3) nonprofit tax exemption at the time its election is submitted shall be granted reimbursable status provided that the exemption is obtained and a copy is filed with the department within 180 days of the date the election is submitted. The organization shall post a bond or other surety as provided by law and in these rules. Should the organization fail to obtain an exemption within 180 days, the election shall be invalid and the organization shall be required to pay contributions upon all taxable wages paid during the period covered by the invalid election at the contribution rate it would have had if the invalid election had not been made. A new election may not be made by the organization until it has obtained a 501(c)(3) nonprofit tax exemption and has filed a new election. Such new election shall not be retroactive to cover the period of the invalid election. Benefits reimbursed during the invalid election shall be used to offset the contributions due and any excess shall be refunded to the organization.

23.70(7) Any accepted reimbursable employer that has deposited a surety bond shall have that bond in effect for a period of not less than two taxable years and such bond shall be renewed with the approval of the department at such times as the department may prescribe, but in no case less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of contributions. The department shall require periodic adjustments to be made on previously filed bonds as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within 30 days from the date the notice of required adjustment was mailed or otherwise delivered to the organization at its last-known address.

23.70(8) Failure by the bonded organization to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalty as provided in Iowa Code section 96.14, shall render the surety liable on the bond to the extent of the bond as though the surety was the organization.

23.70(9) If any newly electing nonprofit organization fails to file a bond or make a deposit, the department may declare that the organization's Election to Make Payments in Lieu of Contributions to be null and void and the organization shall revert to the status of an organization who has not made an election. The organization may not file a new election for four consecutive calendar quarters following the last quarter in which the determination was established. If any nonprofit organization fails to renew a previously filed bond or to make whole or increase a previously filed bond or other surety, the department may terminate the organization's election for a minimum of four consecutive calendar quarters beginning with the quarter in which written notice is mailed or otherwise provided to the organization of the termination. The department may extend for good cause the period in which a bond or other surety must be filed, renewed, or made whole, but the extension may not exceed 30 days.

23.70(10) The department may for good cause extend the period within which a notice of election to become a reimbursable employer or a notice to terminate reimbursable status must be filed and permit an election to be retroactive.

23.70(11) Any nonprofit organization that terminates its election to reimburse the fund shall continue to be liable to reimburse the fund for benefits which are paid based on wages earned during the effective period of the employer's Election to Make Payments in Lieu of Contributions. All benefits charges based on wages paid after the date of the approval of the change of status to a contributory employer shall be charged to the employer's contributory account.

a. A nonprofit organization terminating its election to reimburse the fund shall be treated as a newly covered employer for the purpose of establishing a contribution rate, except as provided in paragraph "b."

b. Separate accounts will be maintained for the period of time that a nonprofit organization is reimbursable and for the period of time for which the nonprofit organization is contributory. The experience of these accounts will not be combined for rate computation purposes unless the department finds or has reason to believe that the nonprofit organization changing from a reimbursable status to a contributory status is unable to reimburse the fund for benefits outstanding at the time of the change in status plus any benefits paid after the change in status that are based on wages paid while the nonprofit organization was still in a reimbursable status. The department may then, at its own option, use the unreimbursed benefits in the computation of the nonprofit organization's contribution rate and transfer any contributions collected, above what the nonprofit organization would have paid as a newly covered employer, from the nonprofit organization's contributory account to the reimbursable account to apply against the unreimbursed benefits.

23.70(12) Any nonprofit organization which elects to change its status from contributory to reimbursable shall continue to be liable for charges on all benefits based on wages paid when the nonprofit organization was a contributory employer. These charges will be charged to the nonprofit organization's contributory account. The experience of the contributory account will not be merged with the nonprofit organization's reimbursable account.

23.70(13) In the event that a reimbursable nonprofit organization succeeds to a business entity, such successor employer shall not receive a transfer of account balance from the predecessor account. The account balance shall remain with the predecessor account and be used as an offset against any claims attributable to that account. If an employer, whether or not the employer may elect to be reimbursable, becomes a successor to a reimbursable nonprofit organization, the successor employer shall become obligated for the reimbursable nonprofit organization's unpaid benefit charges in the event that the reimbursable nonprofit organization cannot meet this obligation. The successor employer shall also be liable to reimburse the department, whether or not the successor employer is reimbursable or is eligible to elect to become reimbursable, for benefits paid after the date of the sale or transfer that are based on wages paid by the reimbursable nonprofit organization prior to the date of the sale or transfer.

23.70(14) In the event a reimbursable nonprofit organization discontinues business, the reimbursable nonprofit organization will continue to be liable to reimburse the fund in an amount equivalent to the amount of regular unemployment benefits and one-half of the extended benefits paid to an individual that is attributable to wages paid by the reimbursable nonprofit organization prior to the discontinuance of business.

This rule is intended to implement Iowa Code section 96.7(9).

871—23.71(96) Governmental entity—definition.

23.71(1) The definition of a governmental entity is a state, a state instrumentality, a political subdivision or a political subdivision instrumentality, or a combination of one or more of the preceding. An instrumentality of one or more states or political subdivisions may be a part of a state or a political subdivision or it may be independent of political entities and thereby a separate governmental entity. The definition of a governmental entity is held to include but not be limited to:

a. An organization or any division, department, agency, commission, or board of a state or political subdivision made by proper authorities thereof, authorized and created under constitutional provisions or statutes, for the purpose of carrying out a portion of the function of government, including both governmental and proprietary functions.

b. An instrumentality is one which is organized to carry on some function or purpose of government for a state or a political subdivision. There is expressed or implied statutory or other authority creating it. It is an independent legal entity, with power to hire, supervise, and discharge its own employees. Generally, it can sue or be sued in its own name, to hold, convey real and personal property and borrow money.

c. Political subdivisions include counties, cities, municipalities, towns, villages, townships, as well as irrigation, flood control, sanitation, utility, reclamation, drainage, improvement, and public school districts and authorities or any combination of these and similar governmental entity within the state of Iowa.

d. Instrumentalities shall include departments, boards, agencies, commissions, county or municipal corporations, associations and organizations of a state or a political subdivision of the state when it is operated by virtue of the authority, power, or powers conferred upon it by a state or political subdivision of the state, or when they are controlled, supervised or receive direction, expressed or implied, from a state or political subdivision of a state or such rights are vested in public authority or authorities, or the state or the political subdivision of a state has the right, expressed or implied, to control or direct the policy, operation or to influence the organizations or action of individuals, parties or interests that control those who manage or administer the affairs of such organizations.

23.71(2) In cases involving the status of an organization as to whether it is a state, a state instrumentality, a political subdivision of a state or a political subdivision instrumentality, the following factors may be taken into account:

a. Whether the revenues are subject to control by a state, a political subdivision of a state or an instrumentality of either.

b. They may have broad powers of taxation, appropriation or authority to levy special assessments on the land located in the district which will stand as a lien upon the property assessed.

c. It is created or existing by virtue of a state, a political subdivision of the state or instrumentality of either, which operates in the public interest, without profit to private persons, and whose purpose is presumed to be a public benefit and conducive to the public health, convenience and welfare.

d. Whether it is organized or used for a governmental purpose, or an aid in the function of government or it performs a governmental function.

e. Whether there is an expressed or implied statutory or other authority necessary or existing for the creation or use of the organization.

23.71(3) Effective January 1, 1978, the term "employment" does not apply to services performed for this state, a political subdivision of this state or an instrumentality of either by an individual who is: an elected official, a member of a legislative body, a member of the judiciary of a state or political subdivision, a member of the state national guard, air national guard, or armed forces reserve, an employee on a temporary duty basis in the case of fire, storm, snow, earthquake, flood or similar emergency, or in a position designated as a major nontenured policymaking or advisory position pursuant to state law if the position does not ordinarily require duties of more than eight hours per week.

a. The exclusion for a governmental entity from coverage of unemployment of the services of an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency applies only to those individuals who are hired or pressed into service to assist directly with an emergency or urgent distress associated with an emergency, including such temporary tasks as fire-fighting, rescue, removal of storm debris, cleaning up mud and flood debris, restoration of public facilities, snow removal and road clearance. Volunteer firefighters and police officers, and snow removal personnel, who are called to duty in emergency situations such as fires, floods, emergency snow removal or similar public emergency to perform services on a temporary basis for which they receive pay, are excluded from coverage. *City of Charles City v. Iowa Department of Job Service*, Law No. 2262, District Court for Floyd County. The exclusion does not apply to permanent employees whose usual responsibilities include emergency situations.

b. The provision which excludes an individual employed by a governmental entity who exercises duties in a position defined in state law as a major nontenured policymaking or advisory position, or a policymaking or advisory position which ordinarily does not require duties of more than eight hours per week, covers those individuals holding positions designated by, or pursuant to, state law as a policymaking or advisory position. Political subdivisions which have authority to enact ordinances or resolutions without recourse to the state legislature but under authority of state law may also establish and define such positions. The positions may qualify for the exclusion if the political subdivision has enacted an ordinance or resolution creating or designating one of its positions as policymaking or advisory, provided power to make the ordinance or resolution is authorized or permitted by the laws of the state. If the state law or local ordinance or resolution properly designated the positions as policymaking or advisory, the exclusion is clearly applicable. Where the law or the ordinance does not clearly and specifically so categorize or label the position, other pertinent factors such as job descriptions, the qualification of individuals considered for and appointed to the position and the responsibilities involved, shall be taken into account in determining the character of the position for purposes of applying the exclusion.

(1) "Policymaker" is defined as generally referring to the determination of the direction, emphasis and scope of action in the development of, and the administration of, governmental programs. Such responsibilities are confined to and inherent in jobs of the higher echelons of government.

(2) An "advisory position" is one which advises established governmental agencies and officers with respect to policy, program and administration without having authority to implement the recommendations.

(3) The word "major" in the phrase "major nontenured policymaking or advisory position" refers to high level governmental positions usually filled by appointment by the chief executive of the political entity (governor, mayor, etc.), or a council, and which involves responsibilities affecting the entire political entity, whether it be the state, county or city.

(4) The term "nontenured" is used in its usual meaning to mean that the position is not covered by merit system or civil service law or rules with respect to duration of appointment to the service.

(5) Service in a policymaking or advisory position where the performance of the duties ordinarily does not require more than eight hours per week is exempted. It makes no difference whether the position is tenured or not. If the position ordinarily requires more than eight hours per week, the exclusion does not apply. The number of hours required should be determined by reference to the law establishing the position and the actual time spent by incumbents.

c. An elected official includes an individual appointed to serve the unexpired term of an elected position. Such an individual's services for such period are excluded because the individual is performing excluded services.

d. An official elected by a body other than the public, such as by a vote by the legislature, board of supervisors, council, school board or trustees, to perform services for a government entity, such individual is not excluded from coverage.

e. Services performed for the state national guard or the air national guard are excluded from coverage of the employment security law only as to the services in the individual's "military" capacity. It does not apply to any service performed in any other capacity.

f. If a member of the state national guard or air national guard is employed in a civilian capacity performing services for either organization as distinguished from "military" service, the civilian service would be covered as an employee of a governmental entity to the same extent as any other employee.

23.71(4) Exemption from “employment” for individuals performing services for a governmental entity as part of an unemployment work relief or work training program. Services performed by an individual for a government entity for the purpose of qualifying or repaying a welfare or relief grant will not be considered “employment” provided that:

a. The major purpose of the program under which the work is performed is to relieve individuals from their unemployment or poverty.

b. The government entity does not pay the welfare or relief grant directly to the individual but instead pays items such as rent, power bills, medical bills, etc., for the individual.

c. The services performed by the individuals do not displace regularly employed workers of the government entity.

This rule is intended to implement Iowa Code sections 96.7(8) and 96.19(18) “a”(6)(e) and (g).

871—23.72(96) Governmental entity—elective coverage and liability.

23.72(1) Any governmental entity may elect to be a governmental contributory employer by filing a written application known as “Election to Pay Contributions as a Government Contributory Employer,” Form 68-0053, for elective coverage as a governmental contributory employer. Any governmental entity failing to file such an election will be considered as a governmental reimbursable employer. The Form 68-0053 must be signed by a duly constituted governmental official. The election shall be approved, if the department finds that:

a. It is an application for all employees of the entity.

b. The applicant is a “governmental entity.”

c. It sets forth the name and address of the entity.

23.72(2) The effective date of an elective coverage agreement filed by a government entity is the first day of the calendar year in which the election was filed.

23.72(3) An agreement for elective coverage shall be continued in effect from period to period unless a written application for termination has been filed with the department 30 days before the beginning of the taxable year for which such termination shall first be effective following the initial one-year period of coverage.

23.72(4) An applicant may withdraw an application for elective coverage prior to final approval of the application. The director may, upon written request of the applicant, cancel an elective coverage agreement which has been finally approved if the applicant shows that the application was submitted through justifiable mistake, or error, or was submitted by a person not having proper authorization to bind the applicant.

23.72(5) If a governmental entity is succeeded in whole or in part by another governmental entity, the successor may elect to continue the elective coverage agreement of the predecessor or may elect to terminate the elective coverage agreement of the predecessor. If the successor governmental entity was, prior to the acquisition of the predecessor, a governmental entity under an approved elective coverage agreement, the elective coverage agreement of the predecessor shall be continued to the same extent as the elective coverage agreement of the successor. If the successor governmental entity was, prior to the acquisition of the predecessor, a governmental entity not under an approved elective coverage agreement, the successor shall meet the requirements of this section if it elects to continue the elective coverage agreement of the predecessor.

23.72(6) The contribution rate of a governmental contributory employer shall be determined by the ranking of the governmental contributory employer's percentage of excess when compared to all other governmental contributory employers' percentage of excesses and the rate assigned to each rank as determined by the base rate of all governmental contributory employers. The base rate is determined by adding or subtracting the difference between the benefits charged and the contributions paid by governmental contributory employers since January 1, 1980 (adjusted if necessary by excess contributions from calendar years 1978 and 1979), to or from the total benefits charged to governmental contributory employers during the preceding calendar year and dividing this sum by the total taxable wages reported by governmental contributory employers during the same calendar year. The contribution rate of a governmental contributory employer shall be payable on the taxable wages paid by the governmental contributory employer.

23.72(7) Liability upon the sale, transfer or discontinuance of a reimbursable governmental employer.

a. If a governmental reimbursable employer sells or otherwise transfers its enterprise, business, or operation to a subsequent employing unit, and the subsequent employing unit is determined to be a successor employer, the successor employer shall become liable to the department for the predecessor governmental reimbursable employer's benefit charges that are unpaid as of the date of the sale or transfer in the event that the predecessor governmental reimbursable employer cannot meet this obligation. The successor employer shall also be liable to reimburse the department, whether or not the successor employer is reimbursable or is eligible to elect to become reimbursable, for benefits paid after the date of the sale or transfer that are based on wages paid by the predecessor governmental reimbursable employer prior to the date of the sale or transfer.

b. If a reimbursable instrumentality of either a state or a political subdivision is discontinued other than by sale or transfer, the state or the political subdivision shall reimburse the department for the reimbursable instrumentality's benefit charges that are unpaid at the time the reimbursable instrumentality was discontinued. In addition, the state or the political subdivision shall be liable to reimburse the department for benefits paid after the discontinuance of the reimbursable instrumentality that are based on wages paid by the reimbursable instrumentality prior to the discontinuance.

This rule is intended to implement Iowa Code section 96.7(8).

871—23.73(96) Governmental entities—delinquent accounts.

23.73(1) Any governmental entity which is an employer and which becomes delinquent in the payment of contributions or the reimbursement of benefits shall be assessed for the same together with any interest and penalty due thereon.

23.73(2) Contributions are due within 30 days of the end of the quarter for which they are incurred. Reimbursable benefit payments are due 30 days after the date of the statement.

23.73(3) If an amount due from a governmental entity of this state remains due and unpaid for a period of 120 days after the due date, the director shall take action as necessary to collect the amount and shall levy against any funds due the governmental entity from the state treasurer, director of the department of revenue, or any other official or agency of this state or against an account established by the entity in any bank. The official, agency or bank shall deduct the amount certified by the director from any accounts or deposits or any funds due the delinquent governmental entity without regard to any prior claim and shall promptly forward the amount to the director for the fund. However, the director shall notify the delinquent entity of the director's intent to file a levy by certified mail at least ten days prior to filing the levy on any funds due the entity from any state official or agency.

This paragraph is an exact quote from 1979 Iowa Acts, chapter 33, section 25. It is being used as a rule because it conflicts with the preceding paragraph in Iowa Code chapter 96. The preceding paragraph in section 96.14(3) states delinquency as a period exceeding two calendar quarters. The above period of 120 days is the most recent expression of the legislature.

This rule is intended to implement Iowa Code section 96.14(3) and 1979 Iowa Acts, chapter 33.

871—23.74 to 23.81 Reserved.

871—23.82(96) Definition of construction employer.

23.82(1) Construction. The term “construction” includes new work, additions, alterations, reconstruction, installations, and repairs. Construction activities are generally administered or managed from a relatively fixed place of business, but the actual construction work is performed at one or more different sites. If a company has more than one relatively fixed place of business from which it undertakes or manages construction activities and for which separate data on the number of employees, payroll, receipts and other establishment type records are maintained, each place of business is considered a separate construction establishment.

a. Three broad types of construction activity are covered: (1) building construction by general contractors or by operative builders; (2) heavy construction other than building by general contractors and special trade contractors; and (3) construction activity by other special trade contractors. Special trade contractors are primarily engaged in specialized construction activities, such as plumbing, painting, and electrical work, and work for general contractors under subcontract or directly for property owners. General contractors usually assume responsibility for an entire construction project, but may subcontract to others all of the actual construction work or those portions of the project that require special skills or equipment. General contractors thus may or may not have construction workers on their payroll.

b. Building construction general contractors are primarily engaged in the construction of dwellings, office buildings, stores, farm buildings, and other building construction projects. Operative builders who build on their own account for resale are also included in this division. Establishments primarily engaged in construction for the investment builder are classified in this definition.

c. General contractors and special trade contractors for heavy construction other than building are primarily engaged in the construction of highways; pipelines, communications and power lines, and sewer and water mains; and other heavy construction projects. Special trade contractors are classified in heavy construction other than building if they are primarily engaged in activities such as grading for highway and airport runways; guardrail construction; installation of highway signs; asphalt and concrete construction of roads, highways, streets and public sidewalks; trenching; cable laying; conduit construction; underwater rock removal; pipeline wrapping; or land clearing and leveling.

d. Other special trade contractors undertake activities of a type that are either specialized to building construction or may be undertaken for building or nonbuilding projects. These activities include painting (including bridge painting and traffic lane painting) and electrical work (including work on bridges, power lines and power plants).

e. Force account construction is construction work performed by an establishment primarily engaged in some business other than construction, for its own account and use, and by employees of the establishment. This activity is not included in this definition, but is classified according to the primary activity which is or will be performed in the establishment. However, construction work performed as the primary activity of a separate establishment of an enterprise for the enterprise's own account is included in this definition.

f. The installation of prefabricated building equipment and materials by general contractors and special trade contractors is classified in this definition.

g. Establishments primarily engaged in the sale and erection of the following illustrative types of structures or integral parts of structures, generally site assembled, are classified in construction rather than in trade:

- (1) Steel work on bridges or buildings;
- (2) Elevators and escalators;
- (3) Sprinkler systems;
- (4) Central air conditioning equipment;
- (5) Communication equipment; and
- (6) Insulation material.

23.82(2) The term “*construction*” includes, but is not limited to:

a. General building contractors—residential buildings.

(1) General contractors—single-family houses. General contractors primarily engaged in construction (including new work, additions, alterations, remodeling, and repair) of single-family houses.

Building alterations, single-family—general contractors
 Building construction, single-family—general contractors
 Custom builders, single-family houses—general contractors
 Designing and erecting, combined: single-family houses—general contractors
 Home improvements, single-family—general contractors
 House construction, single-family—general contractors
 House: shell erection, single-family—general contractors
 Mobile home repair, on site—general contractors
 Modular housing, single-family (assembled on site)—general contractors
 One-family house construction—general contractors
 Prefabricated single-family houses erection—general contractors
 Premanufactured housing, single-family (assembled on site)—general contractors
 Remodeling buildings, single-family—general contractors
 Renovating buildings, single-family—general contractors
 Repairing buildings, single-family—general contractors
 Residential construction, single-family—general contractors
 Row house (single-family) construction—general contractors
 Town house construction—general contractors

(2) General contractors—residential buildings, other than single-family. General contractors primarily engaged in construction (including new work, additions, alterations, remodeling, and repair) of residential buildings other than single-family houses.

Apartment building construction—general contractors
 Building alterations, residential: except single-family—general contractors
 Building construction, residential: except single-family—general contractors
 Custom builders, residential: except single-family—general contractors
 Designing and erecting, combined: residential, except single-family—general contractors
 Dormitory construction—general contractors
 Home improvements, residential: except single-family—general contractors
 Hotel construction—general contractors
 Motel construction—general contractors
 Prefabricated building erection, residential: except single-family—general contractors
 Remodeling buildings, residential: except single-family—general contractors
 Renovating buildings, residential: except single-family—general contractors
 Repairing buildings, residential: except single-family—general contractors
 Residential construction, except single-family—general contractors

b. Operative builders. Builders primarily engaged in the construction of single-family houses and other buildings for sale on their own account rather than as contractors.

Condominium developers on own account
 Cooperative apartment developers on own account
 Operative builders on own account
 Speculative builders

c. General building contractors—nonresidential buildings.

(1) General contractors—industrial buildings and warehouses. General contractors primarily engaged in the construction (including new work, additions, alterations, remodeling and repair) of industrial buildings and warehouses, such as aluminum plants, automobile assembly plants, pharmaceutical manufacturing plants, and commercial warehouses.

Aluminum plant construction—general contractors

Building alterations, industrial and warehouse—general contractors
 Building components manufacturing plant construction—general contractors
 Building construction, industrial and warehouse—general contractors
 Clean room construction—general contractors
 Cold storage plant construction—general contractors
 Commercial warehouse construction—general contractors
 Custom builders, industrial and warehouse—general contractors
 Designing and erecting, combined: industrial—general contractors
 Dry cleaning plant construction—general contractors
 Factory construction—general contractors
 Food products manufacturing or packing plant construction—general contractors
 Grain elevator construction—general contractors
 Industrial building construction—general contractors
 Industrial plant construction—general contractors
 Paper pulp mill construction—general contractors
 Pharmaceutical manufacturing plant construction—general contractors
 Prefabricated building erection, industrial—general contractors
 Remodeling buildings, industrial and warehouse—general contractors
 Renovating buildings, industrial and warehouse—general contractors
 Repairing buildings, industrial and warehouse—general contractors
 Truck and automobile assembly plant construction—general contractors
 Warehouse construction—general contractors

(2) General contractors—nonresidential buildings, other than industrial buildings and warehouses. General contractors primarily engaged in the construction (including new work, additions, alterations, remodeling and repair) of nonresidential buildings, other than industrial buildings and warehouses. Included are nonresidential buildings, such as commercial, institutional, religious and amusement and recreational buildings.

Administration building construction—general contractors
 Auditorium construction—general contractors
 Bank building construction—general contractors
 Building alterations, nonresidential: except industrial and warehouses—general contractors
 Building construction, nonresidential: except industrial and warehouses—general contractors
 Church, synagogue and related building construction—general contractors
 Civic center construction—general contractors
 Commercial building construction—general contractors
 Custom builders, nonresidential: except industrial and warehouses—general contractors
 Designing and erecting, combined: commercial—general contractors
 Dome construction—general contractors
 Farm building construction, except residential—general contractors
 Fire station construction—general contractors
 Garage construction—general contractors
 Hospital construction—general contractors
 Institutional building construction, nonresidential—general contractors
 Mausoleum construction—general contractors
 Museum construction—general contractors
 Office building construction—general contractors
 Passenger and freight terminal building construction—general contractors
 Post office construction—general contractors
 Prefabricated building erection, nonresidential: except industrial and warehouses—general contractors
 Remodeling buildings, nonresidential: except industrial and warehouses—general contractors
 Renovating buildings, nonresidential: except industrial and warehouses—general contractors

Repairing buildings, nonresidential: except industrial and warehouses—general contractors

Restaurant construction—general contractors

School building construction—general contractors

Service station construction—general contractors

Shopping center construction—general contractors

Silo construction, agricultural—general contractors

Stadium construction—general contractors

Store construction—general contractors

d. Highway and street construction, except elevated highways. General and special trade contractors primarily engaged in the construction of roads, streets, alleys, public sidewalks, guardrails, parkways and airports.

Airport runway construction—general contractors

Alley construction—general contractors

Asphalt paving; roads, public sidewalks and streets—contractors

Concrete construction; roads, highways, public sidewalks, and streets—contractors

Grading for highways, streets and airport runways—contractors

Guardrail construction on highways—contractors

Highway construction, except elevated—general contractors

Highway signs, installation of—contractors

Parkway construction—general contractors

Paving construction—contractors

Resurfacing streets and highways—contractors

Road construction, except elevated—general contractors

Sidewalk construction, public—contractors

Street maintenance or repair—contractors

Street paving—contractors

e. Heavy construction, except highway and street construction.

(1) Bridge, tunnel and elevated highway construction. General contractors primarily engaged in the construction of bridges; viaducts; elevated highways; and highway, pedestrian, and railway tunnels.

Abutment construction—general contractors

Bridge construction—general contractors

Causeway construction on structural supports—general contractors

Highway construction, elevated—general contractors

Overpass construction—general contractors

Trestle construction—general contractors

Tunnel construction—general contractors

Underpass construction—general contractors

Viaduct construction—general contractors

(2) Water, sewer, pipeline, communication and power line construction. General and special trade contractors primarily engaged in the construction of pipelines, communication and power lines, and sewer and water mains.

Aqueduct construction—general contractors

Cable laying construction—contractors

Cable television line construction—contractors

Conduit construction—contractors

Distribution lines (oil and gas field) construction—general contractors

Gas main construction—general contractors

Manhole construction—contractors

Natural gas compressing station construction—general contractors

Pipe laying—general contractors

Pipeline construction—general contractors

Pipeline wrapping—contractors
Pole line construction—general contractors
Power line construction—general contractors
Pumping station construction—general contractors
Television and radio transmitting tower construction—general contractors
Sewage collection and disposal line construction—general contractors
Sewer construction—general contractors
Telegraph line construction—general contractors
Telephone line construction—general contractors
Transmission line construction—general contractors
Water main line construction—general contractors

(3) Heavy construction, not elsewhere classified. General and special trade contractors primarily engaged in the construction of heavy projects, not elsewhere classified.

Athletic field construction—general contractors
Blasting, except building demolition—contractors
Breakwater construction—general contractors
Bridle path construction—general contractors
Brush clearing or cutting—contractors
Caisson drilling—contractors
Canal construction—general contractors
Central station construction—general contractors
Channel construction—general contractors
Channel cutoff construction—general contractors
Chemical complex or facilities construction—general contractors
Clearing of land—general contractors
Cofferdam construction—general contractors
Coke oven construction—general contractors
Cutting right-of-way—general contractors
Dam construction—general contractors
Dike construction—general contractors
Discharging station construction, mine—general contractors
Dock construction—general contractors
Drainage project construction—general contractors
Dredging—general contractors
Earthmoving, not connected with building construction—general contractors
Flood control project construction—general contractors
Furnace construction for industrial plants—general contractors
Golf course construction—general contractors
Harbor construction—general contractors
Hydroelectric plant construction—general contractors
Industrial incinerator construction—general contractors
Industrial plant appurtenance construction—general contractors
Irrigation projects, construction—general contractors
Jetty construction—general contractors
Kiln construction—general contractors
Land clearing—contractors
Land drainage—contractors
Land leveling (irrigation)—contractors
Land reclamation—contractors
Levee construction—general contractors
Light and power plant construction—general contractors
Loading station construction, mine—general contractors

Lock and waterway construction—general contractors
 Marine construction—general contractors
 Mine loading and discharging station construction—general contractors
 Mining appurtenance construction—general contractors
 Missile facilities construction—general contractors
 Nuclear reactor containment structure construction—general contractors
 Oil refinery construction—general contractors
 Oven construction, bakers'—general contractors
 Oven construction for industrial plants—general contractors
 Petrochemical plant construction—general contractors
 Petroleum refinery construction—general contractors
 Pier construction—general contractors
 Pile driving—general contractors
 Pond construction—general contractors
 Power plant construction—general contractors
 Railroad construction—general contractors
 Railway roadbed construction—general contractors
 Reclamation projects construction—general contractors
 Reservoir construction—general contractors
 Revetment construction—general contractors
 Rock removal, underwater—contractors
 Sewage treatment plant construction—general contractors
 Ski tow erection—general contractors
 Soil compacting service—contractors
 Submarine rock removal—general contractors
 Subway construction—general contractors
 Tennis court construction, outdoor—general contractors
 Timber removal underwater—contractors
 Tipple construction—general contractors
 Trail building—general contractors
 Trailer camp construction—general contractors
 Trenching—contractors
 Washeries construction, mining—general contractors
 Waste disposal plant construction—general contractors
 Water treatment plant construction—general contractors
 Water power project construction—general contractors
 Waterway construction—general contractors
 Wharf construction—general contractors

f. Plumbing, heating, and air conditioning. Special trade contractors primarily engaged in heating, plumbing, air conditioning and similar work. Sheet metal work combined with any of the above types of work is included here.

Air system balancing and testing—contractors
 Air conditioning, with or without sheet metal work—contractors
 Boiler erection and installation—contractors
 Drainage system installation (cesspool and septic tank)—contractors
 Dry well (cesspool) construction—contractors
 Fuel oil burner installation and servicing—contractors
 Furnace repair—contractors
 Gasline hookup—contractors
 Heating equipment installation—contractors
 Heating, with or without sheet metal work—contractors
 Lawn sprinkler system installation—contractors

Mechanical contractors
 Piping, plumbing—contractors
 Plumbing and heating—contractors
 Plumbing repair—contractors
 Plumbing, with or without sheet metal work—contractors
 Refrigeration and freezer work—contractors
 Sewer hook-ups and connections for building—contractors
 Sheet metal work combined with heating or air conditioning—contractors
 Solar heating apparatus—contractors
 Sprinkler system installation—contractors
 Steam fitting—contractors
 Sump pump installation and servicing—contractors
 Ventilating work, with or without sheet metal work—contractors
 Water pump installation and servicing—contractors
 Water system balancing and testing—contractors

g. *Painting and paper hanging.* Special trade contractors primarily engaged in painting and paper hanging.

Bridge painting—contractors
 Electrostatic painting on site (including lockers and fixtures)—contractors
 House painting—contractors
 Painting of buildings and other structures, except roofs—contractors
 Paper hanging—contractors
 Ship painting—contractors
 Traffic lane painting—contractors
 Whitewashing—contractors

h. *Electrical work.* Special trade contractors primarily engaged in electrical work at the site.

Burglar alarm installation—contractors
 Cable splicing, electrical—contractors
 Cable television hookup—contractors
 Communication equipment installation—contractors
 Electric work—contractors
 Electrical repair at site of construction—contractors
 Electronic control system installation—contractors
 Fire alarm installation—contractors
 Highway lighting and electrical signal construction—contractors
 Intercommunication equipment installation—contractors
 Sound equipment installation—contractors
 Telecommunications equipment installation—contractors
 Telephone and telephone equipment installation—contractors

i. *Masonry, stonework, tile setting and plastering.*

(1) *Masonry, stone setting and other stonework.* Special trade contractors primarily engaged in masonry work, stone setting and other stonework.

Bricklaying—contractors
 Cement block laying—contractors
 Chimney construction and maintenance—contractors
 Concrete block laying—contractors
 Foundations, building of: block, stone or brick—contractors
 Marble work, exterior construction—contractors
 Masonry—contractors
 Refractory brick construction—contractors
 Retaining wall construction: block, stone or brick—contractors
 Stone setting—contractors

Stonework erection—contractors

Tuck pointing—contractors

(2) Plastering, drywall, acoustical and insulation work. Special trade contractors primarily engaged in applying plaster, plain or ornamental, including the installation of lathing and other appurtenances to receive plaster, or in drywall, acoustical and building insulation work.

Acoustical work—contractors

Ceilings, acoustical installation—contractors

Drywall construction—contractors

Insulation installation, buildings—contractors

Lathing—contractors

Plastering, plain or ornamental—contractors

Solar reflecting insulation film—contractors

Taping and finishing drywall—contractors

(3) Terrazzo, tile, marble and mosaic work. Special trade contractors primarily engaged in setting and installing ceramic tile, marble and mosaic, and in mixing marble particles and cement to make terrazzo at the site of construction.

Fresco work—contractors

Mantel work—contractors

Marble installation, interior; including finishing—contractors

Mosaic work—contractors

Terrazzo work—contractors

Tile installation, ceramic—contractors

Tile setting, ceramic—contractors

j. Carpentering and floor work.

(1) Carpentry work. Special trade contractors primarily engaged in carpentry work.

Cabinet work performed at the construction site

Carpentry work—contractors

Folding door installation—contractors

Framing—contractors

Garage door installation—contractors

Joinery, ship—contractors

Ship joinery—contractors

Store fixture installation—contractors

Trim and finish—contractors

Window and door (prefabricated) installation—contractors

(2) Floor laying and other floorwork, not elsewhere classified. Special trade contractors primarily engaged in laying, scraping and finishing parquet and other hardwood flooring. This includes the installation of asphalt tile, linoleum and resilient flooring.

Asphalt tile installation—contractors

Carpet laying or removal service—contractors

Fireproof flooring construction—contractors

Floor laying, scraping, finishing and refinishing—contractors

Flooring, wood—contractors

Hardwood flooring—contractors

Linoleum installation—contractors

Parquet flooring—contractors

Resilient floor laying—contractors

Vinyl floor tile and sheet installation—contractors

k. Roofing, siding and sheet metal work. Special trade contractors primarily engaged in the installation of roofing, siding and sheet metal work.

Architectural sheet metal work—contractors

Ceilings, metal; erection and repair—contractors

Coppersmithing, in connection with construction work—contractors
 Downspout installation, metal—contractors
 Duct work, sheet metal—contractors
 Gutter installation, metal—contractors
 Roof spraying, painting or coating—contractors
 Roofing work, including repairing—contractors
 Sheet metal work: except plumbing, heating or air conditioning—contractors
 Siding—contractors
 Skylight installation—contractors
 Tinsmithing, in connection with construction work—contractors

l. Concrete work. Special trade contractors primarily engaged in concrete work. This includes the construction of residential driveways and walks of all materials.

Asphaltting of private driveways and private parking areas—contractors
 Blacktop work; private driveways and private parking areas—contractors
 Concrete finishers—contractors
 Concrete work: private driveways, sidewalks, and parking areas—contractors
 Culvert construction—contractors
 Curb construction—contractors
 Foundations, building of: poured concrete—contractors
 Grouting work—contractors
 Guniting work—contractors
 Parking lot construction—contractors
 Patio construction, concrete—contractors
 Sidewalk construction, except public—contractors
 Stucco construction—contractors

m. Water well drilling. Special trade contractors primarily engaged in water well drilling.

Drilling water wells—contractors
 Geothermal drilling—contractors
 Servicing water wells—contractors
 Well drilling, water: except oil or gas field water intake—contractors

n. Miscellaneous special trade contractors.

(1) Structural steel erection. Special trade contractors primarily engaged in the erection of structural steel and of similar products of prestressed or precast concrete.

Building front installations, metal—contractors
 Concrete products, structural precast or prestressed: placing of—contractors
 Concrete reinforcement, placing of—contractors
 Curtain wall installation—contractors
 Elevator front installation, metal—contractors
 Iron work, structural—contractors
 Metal furring—contractors
 Steel work, structural—contractors
 Storage tanks, metal; erection—contractors
 Store front installation, metal—contractors

(2) Glass and glazing work. Special trade contractors primarily engaged in glass and glazing work.

Glass installation, except automotive—contractors
 Glass work, except automotive—contractors
 Glazing work—contractors

(3) Excavation work. Special trade contractors primarily engaged in excavation and foundation work, including digging and loading.

Excavation work—contractors
 Foundation digging (excavation)—contractors

Grading: except for highways, streets and airport runways—contractors

(4) Wrecking and demolition work. Special trade contractors primarily engaged in the wrecking and demolition of buildings and other structures, except marine and who may or may not sell material derived from demolishing operations.

Concrete breaking for streets and highways—contractors

Demolition of buildings or other structures, except marine—contractors

Dismantling steel oil tanks, except oil field work—contractors

Wrecking of building or other structures, except marine—contractors

(5) Installation or erection of building equipment, not elsewhere classified. Special trade contractors primarily engaged in the installation or erection of building equipment, not elsewhere classified, such as elevators, pneumatic tube systems and dust collecting equipment. This also includes contractors primarily engaged in the installation of or the dismantling of machinery or other industrial equipment.

Conveyor system installation—contractors

Dismantling of machinery and other industrial equipment—contractors

Dumbwaiter installation—contractors

Dust collecting equipment installation—contractors

Elevator installation, conversion, and repair—contractors

Incinerator installation, small—contractors

Installation of machinery and other industrial equipment—contractors

Machine rigging—contractors

Millwrights

Pneumatic tube system installation—contractors

Power generating equipment installation—contractors

Revolving door installation—contractors

Vacuum cleaning systems, built-in—contractors

(6) Special trade contractors, not elsewhere classified. Special trade contractors primarily engaged in construction work not elsewhere classified, such as construction of swimming pools and fences, erection and installation of ornamental metal work, house moving, shoring work, waterproofing, dampproofing, fireproofing, sandblasting and steam cleaning of building exteriors.

Antenna installation, except household type—contractors

Artificial turf installation—contractors

Awning installation—contractors

Bathtub refinishing—contractors

Boring for building construction—contractors

Bowling alley installation and service—contractors

Cable splicing service, nonelectrical—contractors

Caulking (construction)—contractors

Cleaning building exteriors—contractors

Cleaning new buildings after construction—contractors

Coating of concrete structures with plastic—contractors

Core drilling for building construction—contractors

Countertop installation—contractors

Dampproofing buildings—contractors

Dewatering—contractors

Diamond drilling for building construction—contractors

Epoxy application—contractors

Erection and dismantling of forms for poured concrete—contractors

Fence construction—contractors

Fire escape installation—contractors

Fireproofing buildings—contractors

Forms for poured concrete, erection and dismantling—contractors

Gas leakage detection—contractors
Gasoline pump installation—contractors
Glazing of concrete surfaces—contractors
Grave excavation—contractors
House moving—contractors
Insulation of pipes and boilers—contractors
Lead burning—contractors
Lightning conductor erection—contractors
Mobile home site setup and tie down—contractors
Ornamental metal work—contractors
Paint and wallpaper stripping—contractors
Plastic wall tile installation—contractors
Posthole digging—contractors
Sandblasting of building exteriors—contractors
Scaffolding construction—contractors
Service and repair of broadcasting stations—contractors
Service station equipment installation, maintenance and repair—contractors
Shoring and underpinning work—contractors
Spectator seating installation—contractors
Steam cleaning of building exteriors—contractors
Steeplejacks
Swimming pool construction—contractors
Television and radio stations, service and repair of—contractors
Test boring for construction—contractors
Tile installation, wall: plastics—contractors
Tinting glass—contractors
Wallpaper removal—contractors
Waterproofing—contractors
Weatherstripping—contractors
Welding contractors, operating at site of construction
Window shade installation—contractors

23.82(3) *The assignment of standard industrial codes.* Each operating establishment is assigned an industry code on the basis of its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered. Ideally, the principal product or service should be determined by its relative share of value added at the establishment. Since this is not possible for all sectors of the economy, the following should be used as a guide for determining industry codes:

Division	Data Measure
Agriculture, forestry and fishing (except agricultural services)	Value of production
Mining	Value of production
Construction	Value of production
Manufacturing	Value of production
Transportation, communication, electric, gas and sanitary services	Value of receipts or revenues
Wholesale trade	Value of sales
Retail trade	Value of sales
Finance, insurance, and real estate	Value of receipts
Service (including agricultural services)	Value of receipts or revenues
Public administration	Employment or payroll

In some cases it will not be possible to determine even on an estimated basis the value of production or similar appropriate measure for each product or service. In other cases an industrial classification based on measures of output will not accurately reflect the importance of the diversified activities. In these cases, employment or payroll should be used in lieu of the normal basis for determining the primary activity and subsequent code assignment of the establishment.

This rule is intended to conform to federal changes in the Industrial Code and implements Iowa Code sections 96.7(3)“a”(7), 96.7(3)“d” and 96.11(7).

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